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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, July 23, 2007, at 10:30 a.m.

Senate

FRIDAY, JULY 20, 2007

The Senate met at 10:01 a.m. and was called to order by the Honorable SHERROD BROWN, a Senator from the State of Ohio.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Our Father, be with our lawmakers not only in great moments but also in the repetitive and common tasks of life. Make them children of faith and heirs of peace. May they tackle even mundane responsibilities with integrity and faithfulness, cheerfulness and kindness, optimism and civility. Give them wisdom to be patient with others, ever lenient to their faults and ever prompt to praise their virtues. May they bear with one another's burdens and so fulfill Your law. Keep them ever mindful of the brevity of life and of the importance of being faithful in life's little things.

You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SHERROD BROWN led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 20, 2007.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SHERROD BROWN, a Senator from the State of Ohio, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. BROWN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

Mr. REID. Mr. President, we will be in session today with speeches in morning business and Senators allowed to speak for up to 15 minutes each. Senator DORGAN, though, under an order entered last night, may speak for up to 30 minutes.

We all know this has been a long, hard week. We have had numerous votes. I express my appreciation for staff who have worked so hard all week—2 days in a row, and then last night we ended sometime this morning. So I appreciate very much the hard work of all the very loyal, dedicated staff.

There will be no rollcall votes today.

Next week, I am happy to report and recognize we will have a lot to do. Monday we are going to work on another education measure, a higher education measure. There is an order that has been entered which provides for the possibility—I say possibility—of 12 first-degree amendments, and, of course, second-degree amendments. But this all must be completed within 8 hours. First-degree amendments will be limited to 30 minutes, and second-degree amendments will be limited to 15 minutes, so we are going to, hopefully, conclude this matter on Monday. If all the amendments are not offered, it would, of course, shorten the time.

The two managers are Senators KENNEDY and ENZI, who did such a good job on the bill yesterday, until they lost control of it with the rules we have here, which I hope—I see my friend in the Chamber, the distinguished junior Senator from Utah. I hope as one of the key members of the Rules Committee—being the ranking member of the Rules Committee—he and Senator FEINSTEIN will look at a way we can change these rules. What went on last night was ridiculous. There is no way to stop that unless the rules are changed, and we should change those rules. I think it can be done with the Rules Committee. We have to take a look at that. It did not help anybody.

But, anyway, that is what happened. But it is not going to be that way on this matter on Monday. As I said, Senators KENNEDY and ENZI managed the bill very well, until it ran into the rule we have that allows unending amendments on any subject forever, literally, before you get to final passage.

So we will have multiple votes starting at about 5:15 on Monday. Members should plan accordingly.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

MEASURE PLACED ON THE CALENDAR—H.R. 980

Mr. REID. Mr. President, I understand that H.R. 980 is at the desk and due for a second reading. Is that right?

The ACTING PRESIDENT pro tempore. That is correct.

Mr. REID. Mr. President, it is my understanding the clerk is going to report the matter.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 980) to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

Mr. REID. Mr. President, I object to any further proceedings at this time.

The ACTING PRESIDENT pro tempore. Objection is heard.

The bill will be placed on the calendar.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business, with Senators permitted to speak for up to 15 minutes each.

The Senator from Utah is recognized.

NAKED SHORT SELLING

Mr. BENNETT. Mr. President, after all the fireworks and contention on some previous issues this week, I rise to speak about something that has very little interest to most Americans but tremendous interest, I believe, to a certain portion of our economy. I want to use this opportunity to call it to the attention of the Senate.

I am talking about a practice that occurs in the stock market that has the very interesting name of naked short selling. That conjures up all kinds of interesting images in many people's minds, but this is what it is: It is a practice where somebody sells short a particular stock and never ever has to cover the sale.

Now, even that may be too much stock-market-type jargon for people to understand what I am talking about. So let me quote from an article that appeared in the Wall Street Journal a few weeks ago.

Mr. President, I ask unanimous consent that the article be printed in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BENNETT. Quoting from the article, it says:

> The naked [short selling] debate is a product of the revolution that has occurred in stock trading over the past 40 years. Up to the 1960s, trading involved hundreds of messengers crisscrossing lower Manhattan with bags of stock certificates and checks. As trading volume hit 15 million shares daily, the New York Stock Exchange had to close for part of each week to clear the paperwork backlog.

As an insert in the quotation, I remember those days. I was trading in the stock market at the time, and having the market shut down to clear the back office paperwork was not an unusual experience. Going back to the article:

> That led to the creation of DTCC—

Those are initials for the Depository Trust and Clearing Corporation—

> which is regulated by the SEC.

If I might, as an aside, I do not think that last statement is true. I am not sure that the SEC has control over the DTCC.

> Almost all stock is now kept at the company's central depository and never leaves there. Instead, a stock buyer's brokerage account is electronically credited with a ''securities entitlement.'' This electronic credit can, in turn, be sold to someone else.
>
> Replacing paper with electrons has allowed stock-trading volume to rise to billions of shares daily. The cost of buying or selling stock has fallen to less than 3.5 cents a share, a tenth of paper-era costs.
>
> But to keep trading moving at this pace, the system can provide cover for naked shorting, critics argue. If the stock in a given transaction isn't delivered in the 3-day period, the buyer, who paid his money, is routinely given electronic credit for the stock. While the SEC calls for delivery in three days, the agency has no mechanism to enforce that guideline.

This is where the practice of naked short selling comes in. I did not really understand it until I had some investment bankers—not the kind you find on Wall Street but the more modest kind you find in Salt Lake City—sit me down in front of a screen and show me what happens with stock trading. To put it in the simplest terms, someone who wants to sell short—that is, sell stock he does not own—will place a sale order.

Now, when I first sold short as a participant in the market, my broker gave me this crude little poem to remember. He said: ''He who sells what isn't his'n, must buy it back or go to prison.'' He said: You have to understand, if you sell a stock short, the time is going to come when you are going to have to buy it back to cover that sale by delivering shares. In the days the Wall Street Journal talked about, that meant buying a crinkly piece of paper—a stock certificate—and delivering it so you have covered your short sale.

Today, that is not the case because all of the stock certificates are gone, and the crinkly pieces of paper have been replaced by electronic impulses in a computer. So this is what happens. A short seller enters the market and says: I want to short—I want to sell—1,000 shares of XYZ stock. That means at some point he has to produce 1,000 shares to cover his sale. How do you do that? You borrow the shares, and then you buy them back at some future time.

All right. From whom do you borrow them? The DTCC. They have all the shares on deposit, and so you go to the DTCC and you say: I want to borrow 1,000 shares of XYZ stock. They say: Fine, we have them on deposit. We will lend them to you so you can use them for your short sale.

All right, everything is fine—except in this electronic age, it is possible for you to keep shuffling around the electronic impulses that represent the stock and never ever have to buy it back.

Stop and think about that. That is a pretty good business plan. You can sell as much as you want and never ever have to pay for it. If a stock is trading at $5 a share, you could go in and sell 1,000 shares, and you get paid $5,000 for selling 1,000 shares, and you never have to buy them. Because you are constantly moving around the electronic impulses that represent those shares, you never have to cover.

Now, when you talk to the DTCC people, they say: No, we always make sure there is a delivery. And if there is not, it is not our fault. It is not our responsibility to police this. It is up to the brokerage houses to do this.

The SEC has spent enough time looking at this and enough time talking to me that they issued to me a three-page letter outlining the steps they have taken to stop the practice of naked short selling.

Mr. President, I ask unanimous consent that their letter be included in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 2.)

Mr. BENNETT. I think the SEC letter goes a long way—the SEC actions go a long way. Without getting too technical about it, they have taken a number of steps to prevent what are called ''fails to deliver'' and, therefore, to try to stop the naked short-selling situation.

But I have discovered something that appears to be a way around the SEC rules. Here is the transaction: Broker A shorts 1,000 shares. At the end of 13 days, which is the period he has to produce the shares, he has been unable to find any—probably hasn't even looked—but he has this requirement under the SEC rule to produce 1,000 shares. So he goes to broker B and says quietly: Sell me a thousand shares. Broker B says: I don't have any. Broker A says: It doesn't matter, sell me a thousand shares so I can cover. Broker B: All right. I will sell you a thousand shares so you can cover and there will be no passage of money; this is a deal between the two of us—a rollover. At the end of 13 days, broker B has to deliver a thousand shares, so broker A

sells the same 1,000 phantom shares back to broker B, and they ping-pong these back and forth for as long as they want.

So you can have a situation where people are selling shares that don't exist, taking commissions on the sale, and the profits of the sale, and never, ever having to produce the shares.

I think it is serious enough that we ought to have a hearing about this in the Banking Committee. I have spoken to the chairman of the Banking Committee, Senator DODD, and asked him if it wouldn't be possible for us to have such a hearing at some point in the future. He has expressed a willingness to do that. I understand we can't set a time for that right now; there are too many other things going on in the Banking Committee. But I am delighted to know he is willing to cooperate with us in examining this issue.

I would like to suggest several things I would like to discuss at that hearing. First, by the way, I want the officials of the DTCC to have the opportunity to come in and explain how it works. I have seen letters to the editor in the Wall Street Journal, where they say this article is inaccurate, and I don't want to be relying on this article if it is inaccurate. I think a congressional hearing is a good place for those who are running the DTCC to explain to us how it works. I would like the SEC to come in and give us their background and information as to how their rules are working to try to stop the naked short selling. But I have these two additional recommendations that I would hope we could get done by regulation and, if not, I am prepared to introduce legislation to deal with them.

First, I think there should be a rule which says there cannot be borrowing, that brokers cannot borrow for short sales more stock than is on deposit with the DTCC. I think that is obvious. If there are 3 million shares of XYZ Company on deposit at the DTCC, people should not be able to short sell 4 million shares. I have seen the situation where people with these small companies—and all this happens primarily in little companies—people with small companies, in an effort to defend their stock against the short sales that are rolling over, are buying stock, and it is electronically credited to them and end up on paper, or at least on computer, owning more shares than exist. How can that be? If somebody buys the stock for his company and ends up owning 110 percent of the issued stock, and people are still selling that stock, you know you are dealing with phantom shares.

So my first recommendation would be that the DTCC cannot make available as loans for short sellers more stock than they have on deposit. Once they have reached the point that 100 percent of the shares they have on deposit have been loaned out, they can't loan out any more. I think that is an obvious commonsense recommendation, but it doesn't apply now.

Secondly, I think there ought to be a rule which says a broker cannot be paid a commission on a short sale until the shares are delivered. Back to the business model. The broker sells $5,000 worth of stock. He can do it every day. He can get $5,000 every day, without ever having to cover the stock, and he gets a commission on making the sale. So if you say, no, there will be no commissions paid until the stock is delivered, you will have a significant impact on stopping this activity.

Now, people who hear the complaints about naked short selling say: It only represents a tiny percentage of the trillions of dollars' worth of trading activity that goes on in American markets every day. They are right. It is only a tiny percentage. But that is small comfort to those who have gotten a few dollars together, formed a business, gone to the market to try to raise some capital to support the business, put on the marketplace, say, 25 percent of their shares, holding the other 75 percent for themselves, and then getting some support in the market so that the shares edge up from 25 cents to 50 cents to $1, to $1.25 and then suddenly see the short sellers come in and say: OK, we will drive that stock back down from $1.25 to 2.5 cents, and we will do it by selling stock that doesn't exist and in the process we will ruin the company.

The one thing that convinced me this was real was when the investment bankers sat me down in front of a screen and showed me the stock trading of a company that has been out of business for 3 years, and the stock trades regularly, every 13 days. You know exactly what they are doing. The brokers are rolling the stock back and forth every 13 days, so they are meeting the SEC requirements—they are delivering—but the shares they are delivering to each other back and forth do not exist. The company was driven out of business by the short sellers who made it impossible for them to go to the capital markets.

As I said in my opening remarks, this is a tiny matter. It does not involve very many people, but to the people who are involved, it, frankly, can be a matter of life and death. There are enough of them starting businesses and creating entrepreneurial activity in the United States that we owe it to them to find out exactly what is going on with respect to this activity. That is why I have asked Chairman DODD to consider a hearing on this matter to let us hear from the SEC, to let us hear from the DTCC, and to let us hear from those in the marketplace who have actual experience and see if the present SEC rules are sufficient or if we need to do additional things along the lines of the two items I have suggested.

I yield the floor.

[From the Wall Street Journal, July 5, 2007]

EXHIBIT 1

BLAME THE ''STOCK VAULT''?

CLEARINGHOUSE FAULTED ON SHORT-SELLING ABUSE; FINDING THE NAKED TRUTH

(By John R. Emshwiller and Kara Scannell)

Depository Trust & Clearing Corp. is a little-known institution in the nation's stock markets with a seemingly straightforward job: It is the middleman that helps ensure delivery of shares to buyers and money to sellers.

About 99% of the time, trades are completed without incident. But about 1% of the shares valued at about $2.5 billion on a given a day—aren't delivered to the buyer within—the requisite three days, for one reason or another.

These ''failures to deliver'' have put DTCC in the middle of a long-running fight over whether unscrupulous investors are driving down hundreds of small companies' share prices.

At issue is a nefarious twist on short-selling, a legitimate practice that involves trying to profit on a stock's falling price by selling borrowed shares in hopes of later replacing them with cheaper ones. The twist is known as ''naked shorting''—selling shares without borrowing them.

Illegal except in limited circumstances, naked shorting can drive down a stock's price by effectively increasing the supply of shares for the period, some people argue.

There is no dispute that illegal naked shorting happens. The fight is over how prevalent the problem is—and the extent to which DTCC is responsible. Some companies with falling stock prices say it is rampant and blame DTCC as the keepers of the system where it happens. DTCC and others say it isn't widespread enough to be a major concern.

The Securities and Exchange Commission has viewed naked shorting as a serious enough matter to have made two separate efforts to restrict the practice. The latest move came last month, when the SEC further tightened the rules regarding when stock has to be delivered after a sale, But some critics argue: the SEC still hasn't done enough.

The controversy has put an unaccustomed spotlight on DTCC. Several companies have filed suit against DTCC regarding delivery failure. DTCC officials say the attacks are unfounded and being orchestrated by a small group of plaintiffs' lawyers and corporate executives looking to make money from lawsuits and draw attention away from problems at their companies.

HISTORIC ROOTS

The naked-shorting debate is a product of the revolution that has occurred in stock trading over the past 40 years. Up to the 1960s, trading involved hundreds of messengers crisscrossing lower Manhattan with bags of stock certificates and checks. As trading volume hit 15 million shares daily, the New York Stock Exchange had to close for part of each week to clear the paperwork backlog.

That led to the creation of DTCC, which is regulated by the SEC. Almost all stock is now kept at the company's central depository and never leaves there. Instead, a stock buyer's brokerage account is electronically credited with a ''securities entitlement.'' This electronic credit can, in turn, be sold to someone else.

Replacing paper with electrons has allowed stock-trading volume to rise to billions of shares daily. The cost of buying or selling stock has fallen to less than 3.5 cents a share, a tenth of paper-era costs.

But to keep trading moving at this pace, the system can provide cover for naked

shorting, critics argue. If the stock in a given transaction isn't delivered in the three-day period, the buyer, who paid his money, is routinely given electronic credit for the stock. While the SEC calls for delivery in three days, the agency has no mechanism to enforce that guideline.

''PHANTOM STOCK''

Some delivery failures linger for weeks or months. Until that failure is resolved, there are effectively additional shares of a company's stock rattling around the trading system in the form of the shares credited to the buyer's account, critics say. This ''phantom stock'' can put downward pressure on a company's share price by increasing the supply.

DTCC officials counter that for each undelivered share there is a corresponding obligation created to deliver stock, which keeps the system in balance. They also say that 80% of the delivery failures are resolved within two business weeks.

There are legitimate reasons for delivery failures, including simple clerical errors. But one illegitimate reason is naked shorting by traders looking to drive down a stock's price.

Critics contend DTCC has turned a blind eye to the naked-shorting problem.

DENVER LAWSUIT

In a lawsuit filed in Nevada state court, Denver-based Nanopierce Technologies Inc. contended that DTCC allowed ''sellers to maintain significant open fail to deliver'' positions of millions of shares of the semiconductor company's stock for extended periods, which helped push down Nanopierce's shares by more than 50%. The small company, which is now called Vyta Corp., trades on the electronic OTC Bulletin Board market. In recent trading, the stock has traded around 40 cents. A Nevada state court judge dismissed the suit, which prompted an appeal by the company.

DTCC says the roughly dozen other cases against it have almost all been dismissed or not pursued by the plaintiffs.

Nanopierce garnered support from the North American Securities Administrators Association, which represents state stock regulators. The group filed a brief arguing that if the company's claims were correct, its shareholders ''have been the victims of fraud and manipulation at the hands of the very entities that should be serving their interest.''

DTCC'S DEFENSE

DTCC General Counsel Larry Thompson calls the Nanopierce claims ''pure invention.'' DTCC officials say the main responsibility for resolving delivery failures lies with the brokerage firms. DTCC nets the brokerage firms' positions but it is the brokerages that manage their individual client accounts and know which client failed to deliver their stock.

DTCC officials say that Nanopierce had internal business problems—including heavy losses—to explain its stock-price drop. DTCC received support in the suit from the SEC, which filed a brief defending the trade-processing system and arguing that federal regulation pre-empted state-court review.

In January 2005, the SEC made an initial swipe at the naked-shorting problem by requiring that if delivery failures in a particular stock reached a high enough level, many of those failures would have to be resolved within 13 business days. But some failures weren't covered by the rule. The SEC action in June aimed to cover those remaining delivery failures. Naked shorting could ''undermine the confidence of investors'' in the stock market, SEC Chairman Christopher Cox says.

However, it doesn't seem likely that the SEC's latest move will end the debate that has been raging in the market for years. While lauding the SEC action, critics are questioning whether it is sufficient. The SEC still hasn't taken all the steps necessary to ensure ''a free and transparent market'' as required under federal securities laws, says James W. Christian, a Houston attorney who represents several companies that claim to have been damaged by naked shorting.

Among other things, authorities need to make public much more trading data related to stock-delivery failures, he says.

Critics contend that DTCC and the SEC have been too secretive with delivery-failure data, depriving the public of important information about where naked shorting might be taking place. Currently, DTCC's delivery-failure data can only be obtained through a Freedom of Information Act request to the SEC, which has released some statistics that are generally two months old.

In light of the controversy, DTCC has proposed making more information available and the SEC says it is looking at releasing aggregate delivery-failure data on a quarterly basis.

EXHIBIT 2

This memorandum has been compiled by the staff of the SEC. This document has not been approved by the Commission and does not necessarily represent the Commission's views.

MEMORANDUM

To: Mike Nielsen, Office of Senator Robert F. Bennett.

From: James A. Brigagliano, Associate Director, Division of Market Regulation; Victoria L. Crane, Special Counsel, Division of Market Regulation.

CC: Josephine Tao, Assistant Director, Division of Market Regulation.

Re: June 20, 2007 Meeting.

Date: July 13, 2007.

I. INTRODUCTION

During our meeting on June 20, 2007 regarding various short sale-related items, Senator Bennett requested that we prepare a memorandum outlining initiatives taken by the Commission and staff of the Commission's Division of Market Regulation (''Division Staff') that we discussed during the meeting. Accordingly, this memorandum discusses: (a) remarks by Chairman Cox at the June 13 Open Commission Meeting regarding rulemaking related to abusive ''naked'' short selling, (b) the expansion of short interest reporting requirements to over-the-counter (''OTC'') equity securities and the increased frequency of short interest reporting, (c) public disclosure by the Commission of fails to deliver data, (d) proposed amendments to eliminate the options market maker exception to the close-out requirements of Rule 203(b)(3) of Regulation SHO, (e) amendments to Rule 105 of Regulation M, and (f) examinations by self-regulatory organization (''SRO'') and Commission staff to ensure that options market makers are complying with the close-out requirements of 203(b)(3) of Regulation SHO.

After you have reviewed the below information, please let us know if there is any additional information you would like us to provide.

II. DISCUSSION

A. Remarks by Chairman Cox at the June 13 Open Commission Meeting

On June 13, 2007 at an Open Commission Meeting at which the Commission considered recommendations by Division Staff related to short selling, Chairman Cox stated that he had ''. . . asked the staff to examine whether the market would benefit from further rulemaking specifically designed to correct the practice of abusive naked short selling. Such a rule holds the potential of streamlining the prosecution of this form of market manipulation and, if today's measures leave any doubt, would direct still more Commission power to stamping out such abuses. With its recommendation, the staff should report the level of fails pre- and post-adoption of the rules we consider today so we can assess their effectiveness.''

Pursuant to Chairman Cox's request, Division Staff is currently examining whether or not the market would benefit from such further rulemaking.

B. Short Interest Reporting

On February 3, 2006 the Commission approved an NASD rule proposal to amend NASD Rule 3360 to expand monthly short interest reporting to OTC equity securities. The approval order is available on the Commission's website at http://www.sec.gov/rules/sro/nasd.shtml, or in the Federal Register at 71 FR 7101.

Recently, on March 6, 2007 the Commission approved rule proposals by the NASD, New York Stock Exchange LLC, and the American Stock Exchange LLC to increase the frequency of short interest reporting requirements from monthly to twice per month. The SROs requested, and the Commission approved, an implementation date of 180 days following Commission approval to allow firms sufficient time to make any necessary systems changes to comply with the new reporting requirements. The approval order is available on the Commission's website at http://www.sec.gov/rules/sro/nasd/2007/34-55406.pdf, or in the Federal Register at 72 FR 4756.

C. Public Disclosure of fails to Deliver Data

In response to requests from the public that the Commission has received regarding disclosure of fails to deliver data, including inquiries from various members of Congress, the Commission is considering whether to post on its website aggregate fails to deliver data that the Commission's Office of Economic Analysis receives from the Depository Trust and Clearing Corp. The data would not include confidential broker information and would likely be on a delayed basis.

D. Proposed Amendments to Eliminate the Options Market Maker Exception

On July 14, 2006, the Commission published proposed amendments to limit the duration of the options market maker exception to the close-out requirements of Rule 203(b)(3) of Regulation SHO. The Commission proposed to narrow the options market maker exception in Regulation SHO because it is concerned about large and persistent fails to deliver in threshold securities attributable, in part, to the options market maker exception, and concerns that such fails to deliver might have a negative effect on the market in these securities.

Based, in part, on commenters' concerns that they would be unable to comply with the amendments to the options market maker exception as proposed in the 2006 Proposing Release, and statements indicating that options market makers might be violating the current exception, on June 13, 2007, the Commission approved re-proposed amendments to the options market maker exception that would eliminate that exception to the close-out requirements of Regulation SHO. In addition, the proposed amendments seek comment on two alternative proposals to elimination of the options market maker exception that would provide a narrow options market maker exception that would require excepted fails to deliver to be closed out within specific time-frames.

The proposing release has not yet been published on the Commission's website or in the Federal Register. We anticipate that the

release will be publicly available within the next few weeks. The Commission approved a shortened comment period of 30 days from publication of the release in the Federal Register.

E. Amendments to Rule 105 of Regulation M

Rule 105 governs short selling in connection with a public offering. It is a prophylactic anti-manipulation rule that promotes a market environment that is free from manipulative influences around the time that offerings are priced. The rule fosters pricing integrity by prohibiting activity that interferes with independent market dynamics prior to pricing offerings, by persons with a heightened incentive to manipulate.

The current rule prohibits persons from covering a short sale with offering securities if the short sale occurred during a defined restricted period (usually five days) prior to pricing. The Commission is aware of strategies to conceal the prohibited covering and persistent noncompliance with the rule. Thus, in December 2006, the Commission proposed amendments that would have prohibited a person selling short during the Rule 105 restricted period from purchasing securities in the offering.

On June 20, 2007 the Commission approved amendments that would generally make it unlawful for a person to purchase in an offering covered by Rule 105 if the person sold short during the restricted period unless they made a bona fide pre-pricing purchase meeting certain conditions. The amendments will be effective 30 days from the date of publication of the release in the Federal Register.

F. Options Market Makers and the Close-Out Requirement of Regulation SHO

As we discussed in more detail during our meeting, SRO and Commission staff are currently examining options market makers for compliance with the close-out requirements of Rule 203(b)(3) of Regulation SHO.

Should you have additional questions, please do not hesitate to contact Matt Shimkus in our Office of Legislative and Intergovernmental Affairs at (202) 551–2010.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from North Dakota is recognized for up to 30 minutes.

IRAQ

Mr. DORGAN. Mr. President, on Wednesday morning of this week, following a discussion and debate—and we had a fairly robust debate—about the issue of Iraq and the war in Iraq, on Wednesday morning of this week, the President's Homeland Security Adviser, Frances Townsend, was on the ABC ''Good Morning America'' program, and she said some things about al-Qaida, about terrorists, that reminded me of a period several years ago, prior to the start of the Iraq war. It reminded me of being in a room where top secret, classified briefings are given to Members of Congress—briefings by the now Secretary of State, briefings by the Vice President, briefings by the head of the CIA. Condoleezza Rice, Mr. Tenet, Vice President CHENEY, and others participated in these top secret briefings.

They told us things in those top secret briefings leading up to the decision about the authorization to use force against Iraq. They told us things we now know not to have been true.

Did they know that when they told us? I don't know. We now know, of course, that their claim that Saddam Hussein was trying to acquire yellow cake from Niger for nuclear weapons was bogus. Their claim that he was acquiring aluminum tubes to reconstitute a nuclear threat was not accurate. Their claim that he had mobile chemical weapons labs was not accurate.

By the way, on that one, it only had a single source, a man we later learned who had the code name of ''Curve Ball.'' We also later learned that he was a fabricator and an alcoholic. Their claim was based on a single source we now discover to have been a fabricator. He was a former taxicab driver, for God's sake, in Baghdad. A single source gave rise to the description to the world and to this Congress in top secret, classified briefings that there were mobile chemical weapons laboratories in Iraq.

The list of baseless or unsupported claims goes on. The reconstitution of nuclear weapons, weapons of mass destruction, connections with al-Qaida, we now know, of course, the facts were at odds with what we were being told about these and the other claims they used to support going to war.

The reason I mention this is that at Wednesday's appearance by the President's Homeland Security Adviser, Frances Townsend, on the morning show on ABC, reminded me a bit of what we experienced several years ago from this administration. A description by Frances Townsend about terrorism and the terrorist threat and al-Qaida is completely, and was completely, at odds with what we know to be the truth.

Let me go through a bit of what the President's Homeland Security Adviser said when she was being interviewed about the National Intelligence Report issued this week.

First, the report said al-Qaida is rebuilding, retraining, and getting ready to strike in the United States again. In light of that report, Ms. Townsend was asked if she still believed the United States is winning the war against al-Qaida and terrorism. ''Absolutely,'' she said. ''Absolutely, we are winning.''

She was asked about Pakistan and, specifically, about allowing al-Qaida to have a safe haven in the country of Pakistan. She said: Well, it is a sovereign country, and the President of Pakistan has been a good partner in our war against terrorism.

When asked, she said: The United States is ''safer'' today against al-Qaida because, she said: ''We have challenged them and we are on the offensive and the game is overseas.''

It is almost as if the President and his top homeland security adviser failed to read the National Intelligence Estimate. It made clear that al-Qaida is rebuilding its operational capacity and terrorism is the number one threat to our homeland. Those are the facts. That's reality.

But even if she failed to read the NIE, perhaps she could have been expected to read the newspapers, because they too have made it clear for a long time that al-Qaida is rebuilding and that the terrorists are getting ready to strike us again.

Let me go through a couple of examples.

On July 16, if one was reading in recent days, one would read an article by Joshua Partlow in the Washington Post. It said sectarian violence, a civil war, was the war in Iraq, not al-Qaida. It spelled this out with facts:

> The western Baghdad district of west Rashid confounds the prevailing narrative from the top U.S. military officials that the Sunni insurgent group al-Qaida in Iraq is the city's most formidable and disruptive force. Over the past several months, the [Shiite] Mahdi Army has transformed the composition of the district's neighborhoods by ruthlessly killing and driving out Sunnis and denying basic services to residents who remain.

Pretty clear. Shiite and Sunni violence, not al-Qaida.

One might have read the newspaper reports on June 26, in the McClatchy papers:

> While the U.S. presses its war against insurgents linked to al-Qaida in Iraq, Osama bin Laden's group is recruiting, regrouping, and rebuilding in a new sanctuary along the border between Afghanistan and Pakistan, senior military intelligence and law enforcement officials said. The threat from radical Islamic enclaves in Waziristan is more dangerous than that from Iraq, which President Bush and his aides called the ''central front'' of the war on terrorism, said some current and former U.S. officials and experts. Bin Laden himself is believed to be hiding in the region, guiding a new generation of lieutenants and inspiring allied extremist groups in Iraq and other parts of the world.

That is unbelievable. Al-Qaida is alive and well in Pakistan and Afghanistan. Let me say that again: It is ''recruiting, regrouping and rebuilding'' in this area. And bin Laden himself is believed to be hiding there, in that sanctuary. This is not Iraq, Mr. President. Did the President or his homeland security advisor read this article?

Or perhaps one could go back to a New York Times article in February entitled ''Senior leaders of al-Qaida operating from Pakistan.''

> Over the past year terrorists have set up a band of training camps in the tribal regions near the Afghan border, according to American intelligence and counterterrorism officials. American officials said there is mounting evidence that Osama bin Laden and his deputy, al-Zawahiri, have been steadily building an operations hub in the mountainous Pakistani tribal area of north Waziristan.

Bin Laden and al-Qaida are ''steadily building an operations hub'' in Pakistan is the report.

Now, to the adviser to the President in the White House on terrorism issues, let me say this to her: August 2001, the Presidential Daily Briefing Report put in the hands of President George W. Bush one month before the attacks of September 11, the title was: ''Bin Laden Determined to Strike in U.S.''

That was in August of 2001, the PDB, put in the President's hands.

What was the report in July 2007? The intelligence assessment from the

U.S. National Counterterrorism Center in July 2007 says this: ''al-Qaida better positioned to strike the West.''

Think of that. Six years have intervened—6 years. And the President's Homeland Security Adviser, one who deals with this issue of terrorism and counterterrorism, says that we are ''winning'' the war on terrorism; things are going just fine; things are better. Yet, in 6 years, we go from this Presidential daily briefing entitled ''Bin Laden Determined to Strike in United States'' in August of 2001 to this assessment 6 years later: ''Al-Qaida Better Positioned to Strike the West.''

I ask the question: Are we really winning? I think we would expect the Homeland Security Adviser to be dealing with facts.

Let me describe the facts as stated by the National Intelligence Estimate. The National Intelligence Estimate was released in both a classified and unclassified version. The unclassified version says:

Al-Qaida is and will remain the most serious terrorist threat to the homeland. . . .

It went on to say:

We assess the group has protected or regenerated key elements of its homeland attack capability, including: a safe haven in the Pakistan Federally Administered Tribal Areas, operational lieutenants, and its top leadership.

Now we have a report that says Osama bin Laden and his top deputies are in a safe haven. Six years after they murdered thousands of Americans, they are in a safe haven.

There ought not be 1 square inch of ground on this planet that ought to be a safe haven for the leaders of al-Qaida. Ms. Townsend says, when asked about it, ''Well, Pakistan is a sovereign country.''

What does that mean? Therefore, a safe haven for al-Qaida and bin Laden must be all right? No. Absolutely not. There is no sovereignty anywhere in this world for Osama bin Laden, al-Zawahiri, and the al-Qaida leadership. There ought not be safe harbor or safe haven or sovereignty anywhere in this world for them.

What have we done? Instead of deciding to destroy Osama bin Laden, al-Zawahiri, and the al-Qaida leadership, our country decided, based on information provided by the administration that I referred to earlier, to invade Iraq. It was information we now know not to have been true—deliberate or not, I don't know, but information about yellow cake, aluminum tubes, chemical weapons labs, and about weapons of mass destruction which was not true. Based on that, we decided to take action against Iraq.

The facts are these: Al-Qaida was not in Iraq before we invaded. It is there now. But, it is not the central feature in Iraq. Our intelligence estimates tell us that. The central part of Iraq is sectarian violence, with Shia killing Sunni, Sunni killing Shia, and Shia and Sunni killing American soldiers. It is a civil war, a religious war of sorts, with problems between the Shia and Sunni that date back many centuries.

Now people ask this question, and reasonably so: Should we, 6 years after 2001, the devastating attack against our country that killed thousands of innocent Americans, should we expect or have expected that we would have brought to justice, dead or alive, the leadership of al-Qaida and destroyed them? In my judgment, the answer to that is yes.

The Homeland Security Adviser at the White House, Francis Townsend, says: Well, we are winning. I wish that were true, but it is an assessment that comes only by ignoring all of the facts. Just read the National Intelligence Estimate.

This administration made a calculation that turns out to have been wrong on many fronts. Instead of fighting terrorism first, which I think most Americans would have understood and accepted and believed—the most critical element in the fight to provide security for our future—instead of fighting terrorism first, this administration decided to take action in other areas. We now have more than 160,000 American troops in Iraq. Many are going door to door in Baghdad today as I speak. It is the case that there is an al-Qaida presence in Iraq because Iraq has attracted terrorists. As I said, the intelligence community itself has said that is not the central feature of what is happening in Iraq. The central feature of what is going on in Iraq is the sectarian violence and a civil war.

That is why the majority of this Congress decided it is time to change course. It has not been the case that the descriptions by those who want to change course in this Chamber have said let's decide immediately, precipitously, to withdraw all troops. That is not the case. Troops would remain to fight the terrorist elements that do exist in Iraq where they can be fought successfully, for force protection, and to train Iraqi troops. After all, the Iraqi troops will be necessary and the Iraqi soldiers and the police force will be necessary to provide security in the country.

It is long past time for this country to say to the Iraqis: You now have a new government. Saddam Hussein is dead. He was executed after a trial for his crimes and atrocities. He is gone. He was a brutal dictator. But, Saddam Hussein is dead. You have a new constitution, you have a new government, and now the question remains: Do you have the will to take back your own country and provide for your own security? Are there sufficient able-bodied Iraqis to take back the security responsibilities for their country? If not, there is no amount of time in which American soldiers and this country can provide security for a country in the middle of a civil war.

So we must change course. That change in course, in my judgment, is what will allow us to fight terrorism first. If we do not do that, we will, 6 years from now, continue to read about Osama bin Laden and the al-Qaida leadership in a safe harbor or safe haven, living free, escaping justice, and planning additional attacks against this country.

My point is, what has happened, in my judgment, is wrong. The first and central fight is the fight against terrorism. We are not waging that fight because those who attacked this country previously are now in a safe haven planning additional attacks against our country. That comes from the National Intelligence Estimate, not me. That NIE represents the best assessment by our country's best intelligence professionals from 16 different intelligence agencies.

One cannot solve a problem if one is going to ignore the facts or distort the facts. I said that Ms. Townsend on Wednesday morning basically misrepresented what is happening. It seems as if she has failed to see, or refuses to see, all of the evidence that exists, the evidence we have received in the National Intelligence Estimate and other evidence as well, that al-Qaida and bin Laden are stronger today than they have been for many years.

They are getting stronger, not weaker; they are planning more attacks, not hiding; they are recruiting and rebuilding, not running; and they want to strike us again as much as they every have.

But, they are in Pakistan, in a safe haven. They are in the border area near Afghanistan, not Iraq.

It doesn't surprise me that this administration is on a course that is not the course that represents this country's best interests. President Bush has said on previous occasions that we will deal not only with the terrorists who dare attack this country, we will deal with those who harbor and feed them and house them. That was the President's statement. The President said that, as a part of our offensive against terror, we will also confront the regimes that harbor and support terrorists.

When President Bush was asked about Osama bin Laden, he said:

I don't think much about Osama bin Laden. I don't care much about bin Laden.

But, Bin Laden and al-Qaida represent the principal threat to this country. That is why Senator CONRAD and I offered the amendment we did on the Defense authorization bill last week.

The very day Ms. Townsend appeared on television, Wednesday, here is the New York Times' headline: ''Same People, Same Threat.'' That's right, ''Same People, Same Threat.''

Nearly six years after the September 11 attacks, and hundreds of billions of dollars and thousands of lives expended in the name of the war on terror, we are faced with the ''Same People, Same Threat'' as attacked American on September 11. I pose a single, insistent question: Are we safer? This is what the New York Times reported:

. . . After years of war in Afghanistan and Iraq and targeted kills in Yemen, Pakistan,

and elsewhere, the major threat to the United States has the same name and the same basic look at 2001: al-Qaida, led by Osama bin Laden and Ayman al-Zawahiri, plotting attacks from mountain hide-outs near the Afghan-Pakistani border.

The intelligence report, the most formal assessment since the September 11 attacks about the terrorist threat facing the United States, concludes that the United States is losing ground on a number of fronts in the fight against al-Qaida and describes the terrorist organization as having ''significantly strengthened over the past two years.''

If ever we needed good leadership, thoughtful leadership, leadership that will act on the facts and understand the facts and not misrepresent the facts, it is now, at a time when a terrorist organization is planning additional attacks against this country. For this administration to say that things are fine, we are winning, don't worry, and there is a sovereign, apparently, safe haven for the leadership for those who plan to attack us, that is unbelievable, and it must change. If the administration won't change it, the Congress and the American people must change it.

COMPETENT LEADERSHIP

Mr. DORGAN. Mr. President, a number of us have been concerned about the issue of competence for some long while. I take no pleasure in coming to the floor to point out someone's flaws or weaknesses or areas where we are not succeeding, but it seems to me that this country has to be brutally honest with itself, and that includes this administration, in terms of what it is doing, how well, what kinds of changes are necessary to fix what is wrong to safeguard and provide security for this country.

One of the examples of serious trouble with respect to solving problems and addressing issues was the response to Hurricane Katrina. This devastating hurricane hit our country, and it laid bare a whole area of the gulf coast. It was unbelievable what it did to families, homes, and structures. The consequences of it and the cost of it and its toll on human lives and treasure are not even yet calculated.

I think everybody in this country saw what happened as a result of the response of FEMA. I come from a State in which flooding 10 years ago caused the evacuation of a city of 50,000 people—the largest evacuation of an American city since the Civil War. We understand FEMA. They rushed in in the middle of that unbelievable flood in the Red River, where almost the entire city of Grand Forks, ND, was evacuated. FEMA rushed in. Under James Lee Witt, it had become a world-class organization. It did an unbelievable job. I cannot say enough about that organization. FEMA was first rate. I think everybody in that city who was helped by that organization understood the quality of the Federal Emergency Management Agency.

Fast forward and discover that the major appointments to FEMA under this administration were political cronies who had no experience in emergency response or preparedness. So it wasn't surprising that FEMA deteriorated dramatically as an agency, and its response to Hurricane Katrina was abysmal.

I want to describe it with one photograph, if I might. This describes what happened with respect to Katrina. I am describing this because this week something happened that finally ended the chapter on this sorry story. This man is Paul Mullinax, sitting in front of an 18-wheel truck in Florida. His truck is a refrigerated truck, and it is used to haul ice. Katrina hit, and one of the needs in the deep South, when people and property and everything was devastated and they were trying to figure out how to deal with it, they needed ice in the middle of that scorching heat. So FEMA contracted with truckers to haul ice in 18-wheel trucks, refrigerated trucks, to help the victims of Katrina.

Here is Paul Mullinax in the photo. Paul was in Florida at the time. He got a call and was invited to contract to haul ice. He drove his 18-wheeler to New York City and picked up a load of ice. Let me tell you where he went. I have a map. Paul went from Florida up to New York City to pick up some ice—in Newburg, NY. Then they told him to go to Carthage, MO, with the ice. He went there, to Missouri, to deliver ice. FEMA said, when he got there: No, we want you to go to Montgomery, AL, with your truckload of ice for the victims of Katrina.

Then he got to Montgomery, AL, and here is what happened to him. He, with over 100 other truckers, refrigerated trucks holding ice for the victims of Katrina, sat for 12 days. This is a picture of Paul Mullinax sitting in his lawn chair, with a little grill. For 12 days, he sat there. Finally, they said to him: We want you to take your ice to Massachusetts.

Think of this. Taxpayers paid over $15,000 for this load of ice. He was told the ice was for the victims of Katrina, and hundreds of other truckers had the same circumstance. He was sent from Missouri to Alabama, sat for a dozen days on the tarmac of a military installation, and then told he should take that ice up to Massachusetts and put it in storage.

This week, 2 years later, after spending over $20 million, that ice was taken out of storage in Massachusetts and discarded because they felt it was probably contaminated after 2 years. So finally it ends, the saga about hauling ice to the victims of Katrina.

How do I know Paul Mullinax? I asked Paul Mullinax to come to Washington to testify about what happened. He didn't want to do it. I sat in a parking lot of a grocery store one Sunday on the phone with Paul Mullinax and said: Paul, I want you to come to a hearing we are holding to tell this story. People need to understand what is wrong. Only by understanding what is wrong can we get this fixed.

Paul came up to Washington, DC, and testified before a hearing and told us what had happened. Some people wouldn't believe it. You are going to haul ice from New York to Missouri to Mississippi and then are told to offload it at a warehouse in Massachusetts, ice for the victims of Katrina? If there is one story that demonstrates the complete absurd incompetence of the response to Hurricane Katrina, it is the story of Paul Mullinax, a good American who wanted to do the right thing, and in contracting with the Federal agency that was incompetent came up with this absurd experience.

I have tried since to find out who was the decision maker in Government, who decides we are going to haul ice from New York to Massachusetts through Missouri and Mississippi that is supposed to go to victims of Hurricane Katrina, and we are going to spend all of that money and do it incompetently, who was responsible, who made those decisions, and you cannot find out who that unnamed person is who makes that kind of Byzantine decision that in my judgment fleeces the American taxpayer, that injures those who were victims of Hurricane Katrina by not getting the ice to the victims who needed it.

I wanted my colleagues to know, because I have spoken about this before, that this week at last—at long, long last—the ice that was put in storage as a result of this gross incompetence has now been discarded because they felt perhaps after 2 years the ice was contaminated.

It is a sad story, in my judgment, of the fleecing of America. My hope is we have sufficiently embarrassed and sufficiently made accountable those in FEMA and in this administration so that this will never, ever happen again. It is not what the taxpayers deserve, and it certainly isn't what the victims of Hurricane Katrina deserve.

That same incompetence, regrettably, is steeped in other areas of an administration that, as I indicated as of Wednesday morning's interview with Ms. Townsend, seems content to ignore facts.

I have come to the floor on occasion and spoken well of those who I think do a good job in this administration and elsewhere. I wish I could do that this morning. It is very important for this Congress and this country, when we see incompetence and when we see we are developing a strategy that doesn't work and is not going to work, that we must change course, we must expect better.

My hope is a group of us in Congress, through the hearings I have held on these issues and through the discussions of Senator REID and others who have worked on it in our caucus in the last couple of weeks, my hope is that we will change course with respect to the issue of Iraq, for example, which is the overriding important issue.

I hope one of the changes in course will be we decide our priorities are to

fight terrorism first, and that is not what we are now doing. Let us decide to fight terrorism first. That ought to be the goal. If the terrorist camps are reconstituted, if the threat to our country from al-Qaida, Osama bin Laden, and al-Zawahiri represents a greater threat now, then we must, it seems to me, change course to address that threat, and that threat requires us to fight terrorism first.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CARPER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PETE GEREN

Mr. CARPER. Mr. President, I hoped to speak earlier this week when we were engaged in debate on the Defense authorization bill. That was a night, I am sure our Acting President pro tempore recalls, when folks didn't get much sleep around here. A lot of my colleagues decided as they spoke they wanted to speak for a long time. As a result, I suspect fewer than half of us got to speak, and I had just a few thoughts I wanted to share with respect to not just the Defense authorization bill but the war in which we find ourselves in Iraq and Afghanistan.

Before I do that, I wish to mention that I think it was last Friday at the end of the regular business session—maybe it was Thursday—we went through the Executive Calendar. As the Senator from Ohio knows, on the Executive Calendar we actually take up nominations submitted by the committee that need confirmation by the Senate and we deal with those. Oftentimes, if they are not controversial, we deal with them by unanimous consent.

One of the nominations that came before us last week, under unanimous consent, was that of Pete Geren, who had been nominated to be Secretary of the Army. Our Acting President pro tempore spent a number of years in the House of Representatives. I was there 10 years. I think he was there for about as long, maybe even longer.

One of the finest people I ever served with in the House of Representatives was a Democratic Congressman from Texas who actually succeeded Jim Wright. Jim Wright stepped down as our Speaker, resigned from the Congress, there was a special election, and who ended up getting elected but Pete Geren. He became a Congressman for four terms and was admired by Democrats and Republicans alike. Before that, he had served as an aid to a legendary Senator from Texas, a fellow named Lloyd Bentsen, who was also our party's nominee for Vice President.

Pete went to Georgia Tech and the University of Texas. He got a law degree from the University of Texas, married well, had three kids, and ended up here in the Congress with all of us. He resigned after his fourth term and went back to Texas to become a businessperson and to practice law. He did that for I think about 5 years, and lo and behold, he got a call from a Republican administration to ask him to serve in the Department of Defense, where he was a senior aid in the Secretary's office, a role he played for I think about 3 or 4 years.

Subsequent to that, Pete Geren was asked to serve in a variety of roles. He has been our Acting Secretary of the Air Force, he has been the Under Secretary of the Army, the Interim Secretary of the Army, and for the last week or so now, he has been the Secretary of the Army.

I ask unanimous consent to have printed in the RECORD his statement before the Armed Services Committee, his confirmation hearing statement.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[Congressional Hearings, June 19, 2007]

SENATE ARMED SERVICES COMMITTEE HOLDS HEARING ON THE NOMINATION OF PRESTON GEREN TO BE SECRETARY OF THE ARMY

GEREN: Mr. Chairman and Senator Warner and members of the committee, it truly is an honor to be before you today as the president's nominee.

I want to thank the president for his confidence in me and Dr. Gates for his confidence, as well. It's truly a privilege to have this opportunity.

Let me thank Senator Hutchison and Senator Cornyn for their very kind remarks, two great leaders for our state and two great leaders in this Senate, and I deeply appreciate, and I know my family did, as well, their kind and generous remarks.

Mr. Chairman, I'd also like to note Senator Hutchison's predecessor, who was the person who brought me into public life, Senator Lloyd Bentsen, and had it not been for the opportunity to work for Senator Bentsen, I'm confident I would not have the opportunities to serve in our government today.

Senator Bentsen passed away over the past year, a great American, a great Senator, and I want to acknowledge my debt to him.

Senator, I had introduced my family earlier. I've got, as you do, three wonderful girls, three great kids, and, again, I want to thank them for standing with me and standing with Beckie and me in our time here in Washington and all the time.

My family and I came to Washington planning a three-year hitch and six years later, we're still here.

I joined the Department of Defense in August 2001, expecting a peacetime assignment in business transformation of the Department of Defense. Then came September 11 and the war.

There's a sense of mission working among our military during time of war that's hard to walk away from. For the past six years, I've watched soldiers, sailors and airmen go off to war and I've watched their families stand steadfast and unwavering in their support of their departed loved ones and live with the uncertainty of whether he or she would return home.

And they live with a certainty that there would be birthdays, holidays, anniversaries, graduations and the ups and downs of everyday life that their loved one would miss for 12 months, originally, and now 15 months and too often watch those families live with a loss when their loved one did not return.

I've been inspired by the selfless service of our soldiers and humbled by the sacrifice of their families. I've held staff and leadership jobs in the Pentagon over these past six years and consider it the privilege of a lifetime to have the opportunity to work on behalf of our men and women in our nation's military and their families during the time of war.

Our grateful nation cannot do enough and I'm honored to play a part, a supporting role in their service to our nation on the front lines.

When I came before you seeking confirmation as under secretary of the Army, I told you my top priority would be taking care of soldiers and their families. I reaffirm that commitment today with a greater understanding of that responsibility.

My year as under secretary of the Army taught me much. My four months as acting secretary of the Army has taught me much more.

We have over 140,000 soldiers in Iraq and Afghanistan. We can never take our eye off of that ball. They're counting on their Army, big Army, to continue to provide them the training, equipment and leadership to take the fight to the enemy and defend themselves.

They count on their Army leadership back home to move the bureaucracy on the home front. They count on their secretary and their chief to stand up for them, get them what they need when they need it.

We must act with urgency every day, every day, to meet their needs. Today, the issue is MRAP. Tomorrow, it will be different. The enemy is forever changing and forever adapting.

Mr. Chairman, further, as an Army, we pledge never to leave a fallen comrade. That is not an abstract notion. That means on the battlefield, in the hospital, or in an outpatient clinic or over a life of dependency, if that is what's required to fulfill this pledge.

I've witnessed the cost in human terms and to the institution of the Army when we break faith with that pledge, as a handful did at Walter Reed. A few let down the many and broke that bond of trust.

But I have seen soldiers, enlisted, NCOs and officers respond when they learned that someone has let down a soldier. They step up and they make it right. They make it better and they do not rest until the job is done and they expect and demand accountability.

And I've seen the strain of multiple deployments on soldiers' families. A wife and mother said recently, ''I can hold the family together for one deployment. Two is harder and three is harder still.'' Over half of our soldiers today are married with families. Over 700,000 children are in the families of our soldiers.

The health of the all volunteer force depends on the health of those families. We must expect that our future offers an era of persistent conflict. We will continue to ask much of the Army family. We must meet the needs of our families, provide them with a quality of life comparable to the quality of their service and sacrifice.

It's the right thing to do and the future of our all volunteer force depends on it.

And as President Lincoln pledged to us as a nation, our duty does not stop when our soldier or our nation leaves the field of battle. We must care for those who have borne the battle, his widow and his orphan.

That commitment extends over the horizon and we have learned we have much to do to fulfill that commitment. Lately, we have come face to face with some of our shortcomings, a complex disability system that

can frustrate and fail to meet the needs of soldiers, a system that often fails to acknowledge, understand and treat some of the most debilitating, yet invisible wounds of war, leaving soldiers to return from war only to battle bureaucracy at home and leaving families at a loss on how to cope.

The Department of Defense, working with the Veterans Affairs Department and this committee and this Congress have a opportunity that does not come along often to move our nation a quantum leap forward in fulfillment of that commitment. We cannot squander this opportunity.

And, Mr. Chairman and Senator Warner, I commend this committee for the step forward you all took last week in your bill to start the process of meeting the needs of those wounded warriors and we look forward to working with you, again, to push that initiative.

Mr. Chairman, members of the committee, thank you for all you do for our soldiers and their families. The Army has no greater friend than this committee.

Article 1, Section 8 of the Constitution makes the Army and the Congress full partners in the defense of our nation and in the service of our soldiers and their families.

If confirmed, I look forward to continuing to work with you in discharging our duty to those soldiers.

I look forward to your questions. Thank you.

LEVIN: Secretary Geren, thank you for a heartfelt and a powerful statement. I can't remember that I've ever heard a better one, frankly, coming from a nominee. It was very personal and I think it had power.

I just wish every American, every soldier and everyone of their families could have heard your opening statement.

Mr. CARPER. Subsequent to his giving his statement, the chairman of the committee, CARL LEVIN, and later on Senator JOE LIEBERMAN—both praised the statement, Senator LEVIN saying, ''I can't remember that I've ever heard a better one, frankly, coming from a nominee. . . .'' He said it was ''a heartfelt and a powerful statement.''

One of my favorite sayings is: In politics, friends come and go, but our enemies accumulate. For a lot of us in this business, that is the truth. Pete Geren is the exception to that rule. He is admired and liked by people with whom he served in the House and Senate, Democrat and Republican. For a Democrat in Congress ending up to be asked to serve as Acting Secretary and Secretary of the Army is a compliment and really reflective of the kind of person he is. He is a person who tries to figure out what is the right thing to do and to do it. He routinely, consistently treats other people the way he would want to be treated. He has great values, great work ethic, and is just a terrific public servant to the people of this country.

I am delighted he has now been asked to serve and was confirmed by all of us unanimously to serve as our Secretary of the Army. It is a big job, a tough job at a tough time to serve in that capacity, but I know he will have our full support. He certainly has my support and my long-time admiration.

IRAQ

Mr. CARPER. Mr. President, I would like to step back for a few minutes and reflect on the debate that occurred here a few nights ago with respect to the war in Iraq. One of the things I like to do is to try to see if we can't find consensus—rather than just disagreeing on issues, to try to find ways to bring us together. I have been reflecting a good deal on that debate.

I had an opportunity, along with two of our colleagues, Senator BEN NELSON and Senator MARK PRYOR, to have a breakfast meeting with Secretary Gates at the Pentagon earlier this week. That was the first time I had ever had a chance to spend any personal time with Secretary Gates, who came to us as one of the people who served on the Iraq Study Group. You may recall that, Mr. President, he served there for most of its time and has been president of Texas A&M. He served in a number of leadership posts here in earlier administrations and was a senior official in intelligence. He is a very bright, able guy and also of very good heart, someone who, over breakfast with us, was remarkably candid in his observations, not someone who tried to sugar-coat what is going on in Iraq but who just was as honest and forthright with us. That was enormously refreshing.

He is a person of strong intellect, obviously, and a person who dealt with a faculty senate at Texas A&M and I think is not uncomfortable dealing with the U.S. Senate. I have been told by any number of people who have been presidents of universities that the transition to working here in this body is not all that hard. If you can work with a faculty senate, you can work with the U.S. Senate. We have a couple of people here, ironically, who have been university presidents and now serve here, among them LAMAR ALEXANDER from the University of Tennessee.

I left the breakfast meeting actually feeling encouraged about maybe the prospects, somewhere down the line, of finding consensus.

Here in the United States, our patience grows thin with respect to our involvement there. We have been involved for over 4 years. We have lost thousands of lives, we spent hundreds of billions of dollars—money we have largely borrowed from folks such as the Chinese, South Koreans, and Japanese because these are moneys we don't have, so we simply increase our Nation's indebtedness to pay for this war. Meanwhile, those in this country who pay the taxes, whose sons and daughters, husbands and wives have gone over and been shot at, in some cases been shot, hurt, wounded, in some cases killed—they paid the price and have borne the burden. In many cases, they are tired of it, as I think most of us are. We would like to see the beginning of the end and, frankly, a new beginning at the same time for the people of Iraq.

I think for the most part most of us realize we are going to have a military involvement there, we are going to have a presence in Iraq, maybe for several years. If you look at Kosovo, we have been out of Kosovo for 10 years, but we are still there militarily. The war ended in Korea over 50 years ago; we still have a significant military presence there. I think it is likely we are going to have a military presence in Iraq for some time. The question is, What should they be doing? What should our troops be doing?

Today, as you know, we are policing a civil war, trying to keep Sunnis and Shiites from killing each other while at the same time going after insurgents and training Iraqi troops and trying to help secure the borders of Iraq. My hope is a year from now—and I suggest a year from now—we will still have troops in Iraq, probably tens of thousands, hopefully not 140,000 or 150,000 troops. What will they be doing? My hope is they will not be policing a civil war. My hope is they will not have to be involved in trying to keep Sunnis from killing Shiites and vice versa. My expectation is there is going to continue to be a need to train and equip and supply Iraqi armed forces and police. There will be a need for our troops to protect U.S. assets, the embassy, and other physical infrastructure we have, that we own or occupy. There will be a need in some cases to join the Iraqis in counterinsurgency operations against the really bad guys. There may be an opportunity and need for us to help police the borders of Iraq with Syria and Iran, borders which leak like sieves today.

Those are the kinds of responsibilities I suspect our troops will be called upon to perform. But my hope is we will not need as many of them, not nearly as many of them, that they will not be as numerous nor as visible and hopefully not as much in danger as they have been the last 4 years.

On the Iraqi side, what I heard 4½ weeks ago, about a month ago when I was last there, is a lot of the Iraqis don't want us to be there in such great numbers. They don't want us to be as visible. They don't want us to be as numerous. Iraqi Prime Minister Maliki suggested about a week ago that whenever we are ready to step out they are ready to step up. I wish that were true. He later sort of spoke again or someone stepped in, one of his spokespeople stepped in and said that is not exactly what he said or what he meant.

I believe the Iraqis are not of one mind with regard to our presence. Some would like it if we would leave tomorrow, but a number realize we have sacrificed and given our life's blood, a lot of money, a lot of patience with them, and I think for a lot of the folks there they realize that and they appreciate that. But they don't want us to be as numerous or visible, and eventually they want to have their country back with us not as an occupying force, although some may see us as that, but have us playing a diminishing role.

What I think we have here is a growing consensus in this country to begin

reducing our presence—not this month, not this summer, maybe not until later this year. I think we need to send a signal, our President needs to send a signal to the people of our country, to the Congress, that this is not going to continue forever. We don't want it to, it is not sustainable, and it should not be our responsibility forever. Eventually, the Iraqi people have to decide whether they want a country. They have to step up. They have to be willing to make the difficult choices that at least to this point in time their leaders have been reluctant or unable to do.

I don't want to provide a strong defense for inaction on behalf of the Iraqi Parliament and Iraqi leaders, but I remind us, and we have seen it here this week, the U.S. Senate, an institution that has been around for over 200 years, how hard it is for us to come to consensus on difficult issues. We saw that as recently as last night. We saw that as recently as 2 nights earlier, when we were up all night. We, in a country that has worked with democracy and democratic traditions for over 200 years, should not be surprised that in a country where they have basically 2 years of experience, in the middle of a war and insurgency, sometimes they struggle through a democratic process to make difficult situations. It is not a surprise to me, and I don't think it should be a surprise to them or to any one of us.

Having said that, I am impatient with their inability to make tough decisions. Around here, sometimes we will hold off making a difficult decision unless we are almost staring into the abyss, we have almost no choice, they have figuratively a gun to our heads, and then when we find ourselves in that predicament, Congress—House, Senate, Democrats, Republican, the administration—will come to a consensus.

The Iraqi Parliament, Iraqi leaders are, in my view, at that abyss. When I was over there a month ago with Senator MCCASKILL, we met with, among others, the Deputy Prime Minister of Iraq, an impressive fellow. He is a Kurd, from the northern part of the country. His name is Salih. We were talking about a sense of urgency and the fact that the Iraqi leaders don't feel this sense of urgency about making the difficult decisions, about sharing oil wealth and power, any decision with respect to the greater involvement for the Sunnis, providing an opportunity for the Baathist party folks, who enjoyed great power under the old regime but who basically are enjoying no responsible role at all, to give them a role to play—those kinds of decisions; municipal elections out in the provinces—they are supposed to have them, and they have not had them.

But I talked with Deputy Prime Minister Salih. We spoke about the lack of a sense of urgency on behalf of his country's leaders. He readily acknowledged that was the case.

I was looking for a sports analogy to draw with him and his countrymen, and I said to him: Do you play basketball here? I know you play soccer—you call it football, but do you all play basketball here?

He said: We do. We don't play baseball or what you call football, but we do play some basketball.

I said: Do you recall that basketball is a four-quarter game? The Iraqi leader and the Iraqi Parliament are acting as if you are in the first quarter of the game. In truth, you are in the fourth quarter. This is the fourth quarter of the game. It is not a game, but it is the fourth quarter. We are late into the fourth quarter.

I said to the Deputy Primary Minister: Have you ever heard of something called the shot clock? He had not. Well, in American professional basketball, we have a shot clock that begins when the ball is inbounded and you have so many seconds for the team on offense, with the ball, to take a shot; if you do not, you lose possession of the ball.

I said: We are in the fourth quarter. We are deep into the fourth quarter here. The shot clock has begun to run. And the Iraqi team, half of the team, is still on the sidelines. You are arguing about what the rules of the game are, who is going to get into the game, what play to call, who is going to take the shot. Meanwhile, the shot clock is running.

What the Iraqis need to do, in the Parliament where the hatred between the Sunnis and Shias is such that it makes them hard to ever feel or think like a team, somehow they have to find a way to put that behind them. They have to begin making the difficult decisions they have been unwilling and unable to make.

The Iraqi people are waiting for leadership. As in this country or any country with democratic tradition, the people yearn for strong leadership, fair leadership. The Iraqi people are looking to their leaders to show that they can work together, to figure out how to share this enormous oil wealth of their country, a country where they are capable of pumping today something like 300 million barrels of oil at $70 a barrel. Do the math. I should say 5 million barrels of oil a day, $70 dollars a barrel. That is $350 million. They are pumping less than 2 million. They are literally leaving oil on the table, something like $180 million, almost $200 million a day on the table. These are revenues they will not realize because they simply cannot figure out how to work together. They need to figure that out.

The cabinet has figured that out. They submitted to the Parliament a plan for sharing the oil revenue. The Parliament has to act on it.

We are going to take the month of August off, not the entire month off. We will be in session until probably the first week in August, we come back right after Labor Day, so we will be out about 28 days. Meanwhile, I am told that the Iraqi Parliament was thinking about taking 2 months off this summer. They since have said they will take maybe August off. Our soldiers are not. Our soldiers, marines, our airmen, are not taking August off. They are going to be there exposed, at risk, every day for the month of August. The idea that the Iraqi Parliament will not be in session is unconscionable at a time when our troops are being asked to make such sacrifices. They need to be in session. They need to be figuring out how to deal with these difficult issues.

I am convinced if they do that, the Iraqi people will respond. As the Iraqi people respond, it provides us with an opportunity to begin redeploying our troops this year. There is plenty of work they can do in Afghanistan. In some cases there is an opportunity for them to be stationed not far away if needed. In other cases, frankly, there is even a need to have them back here. As an old Governor, commander in chief of my National Guard, I understand full well how much we relied on the National Guard, especially in times of emergency. Whether in the middle of winter or hurricane season as we have right now, there is plenty of work for them to do. Plus, they have families here. Guard and Reserves, they are being asked to do things that—as a former national flight officer, having served in Vietnam, 18 years as a Reserve naval flight officer—we were never asked to do. We are asking our troops to make extraordinary sacrifices as Reservists and Guardsmen.

There is plenty of opportunity for meaningful engagement, both in Afghanistan, in the Middle East region, not far away from Iraq, and frankly back at home for these troops to do, and simply in some cases to come back and be with their families after an extended separation; in some cases to come back and go to work with their old employers; in some cases to go back to their businesses, which are, in too many instances, in trouble in some cases out of business, and be able to resuscitate their business or breathe fresh life into it. There is plenty to do.

In the meantime, the Iraqis have 350,000 people in their military and police. Think about that. We have about 150,000 troops over there. They have 350,000. We have been working to train them now for several years. I am told some of the battalions have stepped up; they are able to go out alone. Some of them can lead, but they need our help not too far away. They have got to continue to improve their readiness and their ability to go out and lead the fight. And my counsel to the Iraqis is: You can do this, we can help, just like they say in the Home Depot ad: You can do this, we can help. We will help. God knows we have done a lot and we are prepared to do more.

The signal I hope the President would send us, once we hear from General Petraeus and Ambassador Crocker in the middle of September, is not we are going to surge for another year or two or three, but that we are going to begin redeploying our troops.

They are not going to all be out a year from now. There will be plenty for them to do. I have talked about the four or five major responsibilities they can pursue a year or so from now and for some time after that. But I think that sends the kind of signal the American people are waiting to hear. I think it sends a real strong message to the Iraqis as well that our patience is not infinite, that we have expectations of them, that they need to step up. Again, another sports analogy: They need to step up to the plate. This is their time. This is their country. It is not our country, it is their country. If they want to have a country, they have to make the decisions. If they want to have a country, they need to do what is necessary to bring their people together and to build an institution in their country that can survive and persevere and hopefully can prosper.

As we end this week, a week that has seen a lot of ups and downs here in the Senate, a week that has seen more than its usual degree of acrimony, this is a place where we actually mostly like each other, have a pretty good ability to work together with a fairly high degree of civility and comity. A lot of times too often this week that civility and comity has been lacking. Fortunately, when we left here this morning about 1 o'clock, I felt some of the bumps and bruises were now at least behind us, and we were back to a better footing. I hope as we rejoin here on Monday, we will pick up where we left off early this morning with the near unanimous passage of the Higher Education Act, something Senator KENNEDY and Senator ENZI and others have worked on, crafting together a very fine bipartisan bill, that the spirit we walked out of here with this morning will be waiting for us when we return on Monday.

I yield the floor, and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

JUDICIAL NOMINATIONS

Mr. REID. Mr. President, I came to the floor a month or two ago and indicated at that time that I had had conversations with my counterpart, the distinguished Senator from Kentucky, Mr. MCCONNELL. I related to the Senate that Senator MCCONNELL had said to me that judicial nominations were very important to him. I said if that is the case, then they are important to me, and that I would do everything I could to expedite judicial nominations in spite of what had gone on in recent years relative to how Republicans had treated Democratic nominees of President Clinton.

As the majority leader, I take very seriously the Senate's constitutional duty to provide advice and consent with regard to all Presidential nominees, but especially judicial nominees. The judiciary is the third branch of our Federal Government and is entitled to great respect. The Senate shares a responsibility with the President to ensure that the judiciary is staffed with men and women who possess outstanding legal skills, suitable temperament, and the highest ethical standing.

In a floor statement I have given on more than one occasion—I just recounted one I gave—I expressed regret that the process for confirming judicial nominees had become too partisan in recent years. From 1995 to 2000, the Republican-controlled Senate treated President Clinton and his judicial nominees with great disrespect, leaving almost 70 nominees languishing in the Judiciary Committee without even a hearing. Some of them were there for 4 years with nothing happening. Of course, Republicans have had their complaints—most of which I feel are unjustified, but they are entitled to their opinion—about the way a handful of nominees were treated in the early years of the Bush administration.

The partisan squabbling over judicial nominees reached a low point last Congress when Majority Leader Frist threatened to use the so-called nuclear option, an illegitimate parliamentary maneuver that would have changed Senate rules in a way to limit debate on judicial nominations. It would have had long-term negative ramifications for this body. At the time I said that it was the most serious issue I had worked on in my entire time in Government, that the Republicans would even consider changing the rules so the Senate would become basically the House of Representatives. The Founding Fathers set up a bicameral legislature. The Senate has always been different from the House. That is what the Founding Fathers envisioned. That is the way it should continue. But the so-called nuclear option would have changed that forever.

The effort was averted by a bipartisan group of Senators that was unwilling to compromise the traditions of the Senate for momentary political advantage. I was never prouder of the Senate than when it turned back this misguided attempt to diminish the constitutional role of the Senate just to confirm a few more judges. I believed that had a vote taken place, that never would have happened. There were people who stepped forward. I had a number of Republicans come to me and say: I will not say anything publicly, but what is being attempted here is wrong. But remember, we only had 45 Democrats at the time, so we had to be very careful what would happen. Rather than take the chance on a vote, I was so happy that we had 14 Senators, 7 Republicans and 7 Democrats, who stepped in and said: That is not the way it should be. We were able to negotiate. As a result of that negotiation, we let some judges go that with up-or-down votes here, it wouldn't have happened. But it didn't work out that way.

We averted the showdown as a result of the goodwill of 14 Democratic and Republican Senators. It went away. That is the way it should have gone away.

But in the 2 years since the nuclear option fizzled, I have worked hard, first with Senator Frist and now with Senator MCCONNELL, to keep the process for considering judicial nominees on track. I said then that if the nuclear option had been initiated, and I became leader, I would reverse it. I believed so strongly it was wrong, even though we would have had an advantage at the time.

As Senate leaders, we have worked hand in hand with the very able leaders of the Judiciary Committee, Senators LEAHY and SPECTER. In the last Congress the Senate considered two Supreme Court nominees—I opposed both—Roberts and Alito. In hindsight, I did the right thing with the decisions they have made. But I worked with Senators LEAHY and SPECTER to make sure both nominees received prompt, fair, and thorough consideration in the committee and on the Senate floor.

After Senate Democrats gained a majority in last November's elections, I publicly pledged that the Senate would continue to process judicial nominees in due course and in good faith. I explained that I could not commit to a specific number of confirmations because the right way to measure the success of this process is the quality of the nominees, rather than the quantity of nominees and, ultimately, judges. I said the Senate will work hard to confirm mainstream, capable, experienced nominees who are the product of bipartisan cooperation. President Bush made a wise decision at the beginning of this Congress by not resubmitting a number of controversial judicial nominations from previous years. I took that as a sign of good faith and have tried to reciprocate by working with Chairman LEAHY to confirm noncontroversial nominees in an expeditious fashion.

So far this year we have confirmed three court of appeals nominees. Again in hindsight, that is three more than were confirmed in a similar year in the last Clinton term. But we have confirmed three, including a nomination to the Ninth Circuit about which there was some dispute as to whether the seat should be filled by a Californian or someone from Idaho. We have also confirmed 22 district court nominees, and we continue to vote on those at a steady pace.

The judicial confirmation process is working well. We have confirmed 25 judges. It is certainly working much better than it worked when there was a Republican Senate processing President Clinton's nominees. As a result, the judicial vacancy rate is at an all-time low. I have said on the floor and

publicly, this is not payback time with judges. We are going to treat the Republican nominees differently than they treated our nominees.

But all of this hard work cannot prevent good-faith disagreements about the merits of particular nominations. There is one nomination pending in the Judiciary Committee that has aroused significant controversy, the nomination of former Mississippi State Judge Leslie Southwick to the Fifth Circuit Court of Appeals. Senator SPECTER recently said that I told Senator MCCONNELL that Judge Southwick would be confirmed by Memorial Day. Obviously, I can only commit to my own actions, not the actions of others. But I did urge strongly that the Judiciary Committee hold hearings on this, and they did. I urged strongly that this matter be moved as expeditiously as possible, and it has. I urged the Judiciary Committee to do everything it could to move this along, and they did. The problem was, the nomination proved to be controversial and, therefore, it has not moved forward.

The Judiciary Committee has not yet voted on Judge Southwick. But as reported in the press, some Republicans are already threatening to retaliate against the rejection of the Southwick nomination by slowing down Senate business. How much more could they slow it down? What has gone on this year is untoward. Cloture has been filed about 45 times on things that, really, I don't understand why they are doing what they do. To threaten, because of the Southwick nomination, that they are going to slow things down is absurd because they have already slowed things down. They were gearing up to oppose judicial nominees of future Democratic Presidents. That is what they have said. This is so senseless. I think the reaction would be completely unjustified.

My pledge that the Democratic majority would consider judicial nominees in due course and in good faith was hardly a guarantee that every Bush nominee would be confirmed. I was told early on that Judge Southwick was noncontroversial. He had a high rating from the ABA. He had participated in lots of cases. There was no problem. I accepted those representations and, after having accepted them, pushed very hard to move this nomination along. But the facts of his background and his decisionmaking are different than had been represented to me. The Judiciary Committee must still do its work with care, and it should only report those nominees who deserve a lifetime appointment to the Federal bench.

The nomination of Judge Southwick has already been treated more kindly than dozens of Clinton nominees, including nominees to the Fifth Circuit. We have held a hearing. I repeat, during the Clinton administration, almost 70 languished with no hearings. If Southwick has been unable to convince Judiciary Committee members of suitability for the Federal bench, that is his misfortune. Remember, about 70 nominations of President Clinton never even had a hearing. Southwick has had a hearing, and to this point, he has been unable to convince the Judiciary Committee he is the person for the job. Senator LEAHY has stated that anytime Senators LOTT and COCHRAN ask him to put him on the calendar for a vote, he will do so. They haven't asked him to do that yet. Why? Because at this stage it appears Democrats are going to oppose this nomination. But Senator LEAHY said anytime they want to test the vote, they may do that.

I know the administration has sent Judge Southwick around to meet individually with Democratic Judiciary Committee members. Anytime they want that vote, they can have it. Chairman LEAHY and I can only establish a process. We can't promise that the outcome of that process will be to the liking of Republican Senators.

The primary concern that has been raised by Judge Southwick is that he has joined decisions on the Mississippi Appellate Court which demonstrate insensitivity to the rights of racial minorities and others. For example, in the Richmond case, he voted to uphold the reinstatement, with back pay, of a White State employee who used a racial epithet about an African-American coworker.

I ask unanimous consent that the dissent in that opinion by Judge King be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BONNIE RICHMOND, APPELLANT V. MISSISSIPPI DEPARTMENT OF HUMAN SERVICES, APPELLEE

NO. 96–CC–00667 COA

COURT OF APPEALS OF MISSISSIPPI

1998 MISS. APP. LEXIS 637, AUGUST 4, 1998, DECIDED

I dissent from the majority opinion.

The standard of review applied [*19] to administrative decisions is that they must be affirmed if (1) not arbitrary or capricious, (2) supported by substantial evidence and (3) not contrary to law. Brinston v. Public Employees' Retirement System, 706 So. 2d 258, 259 (Miss. 1998).

In this case, the Mississippi Employee Appeals Board, (hereinafter referred to as ''EAB'') made no specific findings of fact. Instead, it merely entered an order which affirmed ''the Order of November 29, 1994''[1], entered by the Hearing Officer Falton O. Mason, Jr. Because the EAB made no findings of its own, we can only conclude that it incorporated by reference and adopted the findings and order of the hearing officer. It is therefore the findings and opinion of the hearing officer which we subject to our review.

[1]The hearing officer's order read as follows:

This came on to be heard on November 16, 1994, at 9:30 a.m. in the Supervisors Board Room, in the Desoto County Courthouse, Hernando, Mississippi, Falton O. Mason, Jr., Hearing Officer;

After receiving testimony and hearing argument of counsel, the Court being fully advised in the premises finds:

Bonnie Richmond appealed her termination by the Mississippi Department of Human Services (hereafter MDHS), for an alleged racial statement made in a private meeting, and later made to the individual after she returned to the DeSoto County Office. The proof shows that she made the alleged statement in a private meeting where the atmosphere and setting were for the free flow of comments and ideas and complaints, her statement was in effect calling the individual a ''teachers pet'' and that she did not repeat that statement, but did in fact apologize to that individual and that individual did in fact accept the apology.

That based upon the allegations set out in the termination letter, the Appealing Party did in fact sustain her burden of proof, and the Appealing Party is reinstated as of July 8, 1994, with back pay and all benefits restored.

SO ORDERED this the 29th day of November, 1994.

[*20] To facilitate that review, I have included at this juncture the full text of the Hearing Officer's opinion, which reads,

I think in my—it appears to me very simply that the department overreacted on this because first I don't find if, in fact, these employees, Bonnie Richmond and Renee Elmore, were in a meeting with Ms. Johnson and Mr. Everett and Ms. Johnson testified that she tried to make them comfortable and relaxed, if it was an open meeting with a give and take atmosphere and this comment was made in the context it was made in, I don't think it was intended at that time for a racial slur.

If the department—if that's correct, if the department takes that as a racial slur, then I see anytime somebody refers to somebody as a honkie or a redneck or a mick or chubby or a good old boy or anything else, it's an action to file an appeal and try to get some response. I think it overreacted.

I do think it would be unprofessional and it is unprofessional to make that remark. I wouldn't be comfortable making it. At the same time, it depends on what company I'm in and under what circumstances.

The other part is as has been pointed out, the termination letter very [*21] clearly states and the testimony in direct opposition to this, further on May 24 you returned to the DeSoto County office. You approached this black employee and told her that you had been in a meeting with Ms. Johnson and had told them that she was a ''good ole nigger.'' That statement is—that's not true. I mean, the testimony indicated that she didn't approach her, she didn't raise it, that it was Renee Elmore that brought it up. She didn't seek out this black employee to tell her anything about it.

Further, I don't find anywhere where it is—the other comments, your conduct in returning and repeating, which she didn't do. To return to the DeSoto County office and repeat that phrase, had she repeated that phrase, it would have been unacceptable totally as though it was acceptable to the Mississippi Department of Human Services. I don't find it having created a distraction within the DeSoto county office. Nobody testified to that, or the surrounding areas. I don't think it's caused employees to question whether the department condones the use of racial slurs. You know, I think the department overreacted.

The part that bothers me is to allow you to continue in this position [*22] would discredit the agency, impair the agency's ability to provide services, violates the agency's responsibility to the public to administer nondiscriminatory services, violates the agency's duty to administer working environment free of discriminatory practices and procedures and subject the department to potential liability for unlawful discrimination.

If, in fact, she had returned to the DeSoto County office, had brought this subject up

again, and the only person—the only testimony that we have about anybody else hearing about this thing was somebody who Ms. Johnson and Mr. Everett had to make the comment to somebody else. Ms.—what's her name?

Mr. Lynchard: Varrie Richmond.

The Hearing Officer: Ms. Varrie Richmond said she didn't tell anybody else. She said she didn't call the state office about the situation, and apparently, until she was contacted by the state office, she had accepted Bonnie Richmond's apology. I just think the agency overreacted, and if the agency might find itself in a situation where every time somebody in the agency is called a redneck by some other employee, that they are going to be calling the state office and wanting some relief or [*23] a honkie or a good old boy or Uncle Tom or chubby or fat or slim.

I mean, I understand that the term ''nigger'' is somewhat derogatory, but the term has not been used in recent years in the conversation that it was used in my youth, and at that point—at that time it was a derogatory remark. I think that in this context, I just don't find it was racial discrimination. I just don't find—she possibly should have a letter of reprimand, but I don't think she needs to be terminated.

I'm going to reinstate her with back pay. The agency can do what they feel like they have got to do.

The Department of Human Services (hereinafter referred to as ''DHS'') gave written notice of its intent to terminate Richmond on June 21, 1994. That notice identified two separate Group III violations (numbers 11 and 16) and provided separately the underlying facts upon which each violation was based.

The first offense was a violation of item number 11, which is ''Acts of conduct occurring on or off the job which are plainly related to job performance and are of such nature that to continue the employee in the assigned position could constitute negligence in regard to the agency's duties to the [*24] public or to other state employees. (emphasis added)

The factual basis given to support this allegation was:

On May 23, 1994 while in conference with Joyce Johnson, Division Director of Family and Children's and Jerald Everett of the Division of Human Resources, you referred to one of our black employees as ''a good ole nigger.'' Further on May 24, 1994 upon returning to DeSoto County you approached this black employee and referred to her using exactly the same words as you used when you were in conference with Joyce Johnson and Jerald Everett the day before.

The hearing officer resolved this issue by finding:

(1) DHS overreacted;

(2) the remark was made in an open meeting with an atmosphere of give and take;

(3) the term ''good ole nigger'' was not a racial slur; (transcript 129)

(4) calling Varrie Richmond a ''good ole nigger'' was equivalent to calling her ''teacher's pet''

(order by Hearing Officer Falton Mason, Jr., November 29, 1994,), and;

(5) Renee Elmore, not Bonnie Richmond, initiated the conversation of May 24, 1994 with Varrie Richmond.

The meeting of May 23, 1994, while hastily scheduled, was a formal meeting with two top tier DHS executives, intended to [*25] allow Bonnie Richmond and Renee Elmore to address what they perceived as problems in the DeSoto County office. While the atmosphere was intended to allow for honest discussion, there is no indication that this was intended as an informal or unofficial meeting. Its purpose was to identify problems, and if necessary to address them.

The fact that a business meeting may be conducted in a relaxed and open atmosphere, is not license to engage in boorish, crude, loutish or offensive behavior. The actions of Bonnie Richmond in referring to Varrie Richmond as a ''good ole nigger'' was indeed boorish, crude, loutish and offensive behavior. This behavior was not merely inappropriate, but highly inappropriate.

That a white employee would suggest the use of the term ''good ole nigger,'' is less inappropriate in a relaxed meeting, raises significant questions about that person's judgment and whether the agency would be negligent in retaining her. That judgment is demonstrated as especially questionable, when one realizes that Bonnie Richmond worked in a division which is approximately 60% black, in an agency with in excess of 50% black employees. Such a demonstrated gross lack of judgment would [*26] justify the dismissal of Bonnie Richmond.

The hearing officer's ruling that calling Varrie Richmond a ''good ole nigger'' was equivalent to calling her ''teacher's pet'' strains credulity, finds no basis in reason and would appear to be both arbitrary and capricious. The word ''nigger'' is, and has always been, offensive. Search high and low, you will not find any non-offensive definition for this term.[2]

2 1. a. Used as a disparaging term for a Black person: ''You can only be destroyed by believing that you really are what the white world calls a nigger'' (James Baldwin) b. Used as a disparaging term for any dark-skinned people. 2. Used as a disparaging term for a member of any socially, economically, or politically deprived group of people.

There are some words, which by their nature and definition are so inherently offensive, that their use establishes the intent to offend. Words such as ''nigger'' when referring to a black person, or the words, ''bitch'' or ''whore'' when referring to a female person. The character [*27] of these terms is so inherently offensive that it is not altered by the use of modifiers, such as ''good ole.''

Much is made of the fact that Renee Elmore indicated she was not offended by the use of the term, ''good ole nigger.''

The test is not whether Renee Elmore was offended by the use of this term. Rather it is (1) whether this term is universally offensive, *Brown* v. *East Miss. Electric*, 989 F.2d 858, 859 (5th Cir. 1993), and (2) whether the use of this term is inappropriate and reprehensible. The answer to each of these is a most definitive ''yes.''

The majority quotes Elmore on page 7, as saying, ''Because I felt as if she was describing the actions of a person, I at that time didn't allow myself to feel anything other than what I felt she was doing and I allowed her that leeway to describe her.'' I suggest that effect must be given to all portions of that quote. Particularly the phrase, ''I at that time didn't allow myself to feel anything.'' (emphasis added).

It is clear that Renee Elmore made a determination to not personalize or allow herself to become emotionally involved in Bonnie Richmond's remark. It is not uncommon for people to deal with offensive remarks [*28] by refusing to associate the remarks with themselves on a personal basis. This makes the remark no less inappropriate or offensive.

However, the resolution of this matter does not hinge upon that fact. The use of the term by Bonnie Richmond in a meeting with two of the top executives of DHS, an agency with about 5000 employees of whom in excess of 50% are black, and where the Division of Family and Children Services has a 60–40 black-white employee ratio demonstrates such a lack of judgment and discretion that to retain her ''could'' constitute negligence in regard to the agency's duties to the public or to other state employees.

The hearing officer and majority opinion seem to suggest that absent evidence of a near race riot, the remark is too inconsequential to serve as a basis of dismissal. Such a view requires a level of myopia inconsistent with the facts and reason.

It is (1) the remark, and (2) the lack of judgment in making it in a professional meeting with top departmental executives, which satisfy the requirement, ''that to continue the employee in the assigned position could constitute negligence in regard to the agency's duties . . . to other state employees.''

The majority [*29] opinion is a scholarly, but sanitized version of the hearing officer's findings and is subject to the same infirmities found in that opinion.

The second reason given for termination of Bonnie Richmond was ''Willful violation of State Personnel Board policies, rules and regulations.''

The factual basis for this second allegation was the same as the first, except it raised the issue of DHS's consideration of this behavior and its impact upon the integrity of DHS. The record does not reflect that DHS identified any specific Personnel Board policies, rules or regulations.

However, it must be presumed that an agency has the authority to mandate civil conduct from its employees.

The actions of Bonnie Richmond exceed (1) acceptable civil conduct, (2) acceptable social conduct, and (3) acceptable business conduct.

This conduct was, by definition, offensive to the individual referred to and the black employees of DHS in general.

The actions of the EAB were not supported by substantial evidence, and I would therefore reverse.

PAYNE, J., JOINS THIS OPINION.

Mr. REID. Judge Southwick says the decision was about technical issues, but the dissent in the case by Judge King is eloquent. I mean eloquent. I hadn't read that opinion prior to my conversations with Senator MCCONNELL, but I have read it. I understand it. I have a totally different view than I had prior to reading that opinion.

The judge's words are eloquent. Here is part of what he said:

There are some words, which by their nature and definition are so inherently offensive, that their use establishes the intent to offend.

Race is a highly sensitive issue throughout the entire United States, but especially in the States that comprise the Fifth Circuit. It took the courageous action of judges, mostly Federal judges, on the Fifth Circuit especially, to carry out the Supreme Court's desegregation decisions and destroy the vestiges of the Jim Crow era. Yet even today no African American from Mississippi sits on that court, despite the many qualified African-American lawyers in that State. Concerns about Judge Southwick need to be seen in that context.

I say that Judge Southwick is not being looked at with lack of favor by the Judiciary Committee because of the color of his skin. It is because of his judicial participation in various opinions.

The members of the Judiciary Committee will decide whether to report

this nomination to the full Senate. If they choose to report the nomination, I will schedule action as quickly as I can. If they reject the nomination, that action will also be on the merits.

After I had read the opinion and understood the case, I visited personally with THAD COCHRAN. I think the world of THAD COCHRAN. I have served with him now in the Congress for 25 years. I have served with Senator LOTT for 25 years. I went to both of them and said: I know how strongly you feel about Judge Southwick, but here are the facts. I read to them the dissent of Judge King. I read to them the full dissent. Anyone who cares to hear what Judge King had to say only has to look at the CONGRESSIONAL RECORD.

I also told them that the Magnolia Bar Association, the African American Bar Association in the State of Mississippi, opposes Judge Southwick. The NAACP opposes Judge Southwick.

Republican Senators may disagree with the decision of the Judiciary Committee when and if it comes, but they should not treat it as an affront or an outrage. It is simply the way in which the Founders envisioned the Senate would work as a partner with the President in deciding who is entitled to lifetime appointments to the Federal bench.

Again, the Judiciary Committee didn't stall Southwick. They scheduled a hearing at a time that was convenient to everyone. It was precise. It was to the point. Everyone was able to ask their questions. They had a full hearing. If he can't convince that committee that he is the man for the job, that is our process. Certainly, at a subsequent time, if and when we get a Democratic President, if they process these nominations in the manner that we have, that will be fine. It is the way we are supposed to work.

Whatever happens with the Southwick nomination, the Senate will continue to process judicial nominations in due course and in good faith, as I have pledged. I repeat, I know how strongly the distinguished Republican leader feels about judges. I think there are a lot of things that are just as important. He feels strongly about this. I accept that. But I would like everyone to look at the record as to what has happened with this nomination. It has been moved expeditiously. They can have a vote anytime they wish in the committee. There are votes that take place almost every Thursday. They can schedule it anytime they want. But I think it would be asking quite a bit for someone to think that when the committee of jurisdiction on an issue turns something down, we should take it up on the floor. That is not how things work.

I would only say, I would think, based on the decisions participated in by Judge Southwick, anyone who has any concern about the feelings of the members of the Judiciary Committee who are Democrats should read this record because it explains very clearly what the problem is in this case.

Mr. President, we were hoping to clear a number of the President's nominations today—the Export-Import Bank of the United States, two nominees we were ready to clear; the Securities Investor Protection Corporation, one, two, three nominations; the National Oceanic and Atmospheric Administration, we have someone there to clear; the Securities Investor Protection Corporation, we have an individual there who has been cleared on our side.

All these nominations have been cleared on our side. The holdups are with the minority. So we are trying to clear the President's nominations. We cannot do it unless the Republicans agree to it. They are his nominations.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

H.R. 980. An act to provide collective bargaining rights for public safety officers employed by States or their political subdivisions.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary, without amendment and with a preamble:

S. Res. 236. A resolution supporting the goals and ideals of the National Anthem Project, which has worked to restore America's voice by re-teaching Americans to sing the national anthem.

S. Res. 248. A resolution honoring the life and achievements of Dame Lois Browne Evans, Bermuda's first female barrister and Attorney General, and the first female Opposition Leader in the British Commonwealth.

S. Res. 261. A resolution expressing appreciation for the profound public service and educational contributions of Donald Jeffry Herbert, fondly known as ''Mr. Wizard''.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. CLINTON:

S. 1840. A bill to amend the Internal Revenue Code of 1986 to provide recruitment and retention incentives for volunteer emergency service workers; to the Committee on Finance.

By Ms. COLLINS (for herself, Mr. AKAKA, Mr. BENNETT, Mrs. BOXER, Ms. CANTWELL, Mrs. CLINTON, Mr. COLEMAN, Mr. DURBIN, Mrs. DOLE, Ms. KLOBUCHAR, Ms. LANDRIEU, Mrs. LINCOLN, Mrs. MCCASKILL, Ms. MIKULSKI, Ms. MURKOWSKI, Mrs. MURRAY, Ms. SNOWE, Ms. STABENOW, and Mr. VOINOVICH):

S. 1841. A bill to provide a site for the National Women's History Museum in Washington, District of Columbia, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. KENNEDY (for himself, Mr. KERRY, Mr. DODD, Ms. MIKULSKI, Mrs. CLINTON, Mr. OBAMA, Mr. SANDERS, Mr. INOUYE, Mr. LEVIN, Mr. AKAKA, Mr. FEINGOLD, Ms. CANTWELL, Mr. MENENDEZ, and Mr. WHITEHOUSE):

S. 1842. A bill to amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the Medicare Program; to the Committee on Finance.

By Mr. KENNEDY (for himself, Mr. SPECTER, Mr. HARKIN, Mrs. CLINTON, Ms. SNOWE, Ms. MIKULSKI, Mr. OBAMA, Mr. DURBIN, Mr. DODD, Mr. LEAHY, Mrs. MCCASKILL, Mr. WHITEHOUSE, Mrs. BOXER, Ms. STABENOW, and Mrs. MURRAY):

S. 1843. A bill to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to clarify that an unlawful practice occurs each time compensation is paid pursuant to a discriminatory compensation decision or other practice, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

ADDITIONAL COSPONSORS

S. 968

At the request of Mrs. BOXER, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 968, a bill to amend the Foreign Assistance Act of 1961 to provide increased assistance for the prevention, treatment, and control of tuberculosis, and for other purposes.

S. 982

At the request of Mrs. CLINTON, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 982, a bill to amend the Public Health Service Act to provide for integration of mental health services and mental health treatment outreach teams, and for other purposes.

S. 1060

At the request of Mr. BIDEN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1060, a bill to reauthorize the grant program for reentry of offenders into the community in the Omnibus Crime Control and Safe Streets Act of 1968, to improve reentry planning and implementation, and for other purposes.

S. 1213

At the request of Mr. LUGAR, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1213, a bill to give States the flexibility to reduce bureaucracy by streamlining enrollment processes for the Medicaid and State Children's Health Insurance Programs through better linkages with programs providing nutrition and related assistance to low-income families.

S. 1318

At the request of Mr. SCHUMER, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 1318, a bill to amend the Internal Revenue Code of 1986 to provide an incentive to preserve affordable housing in multifamily housing units which are sold or exchanged.

S. 1338

At the request of Mr. ROCKEFELLER, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a

cosponsor of S. 1338, a bill to amend title XVIII of the Social Security Act to provide for a two-year moratorium on certain Medicare physician payment reductions for imaging services.

S. 1494

At the request of Mr. DOMENICI, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1494, a bill to amend the Public Health Service Act to reauthorize the special diabetes programs for Type I diabetes and Indians under that Act.

S. 1576

At the request of Mr. KENNEDY, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 1576, a bill to amend the Public Health Service Act to improve the health and healthcare of racial and ethnic minority groups.

S. 1607

At the request of Mr. BAUCUS, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 1607, a bill to provide for identification of misaligned currency, require action to correct the misalignment, and for other purposes.

S. 1692

At the request of Mr. CARDIN, the names of the Senator from Alaska (Mr. STEVENS) and the Senator from Delaware (Mr. BIDEN) were added as cosponsors of S. 1692, a bill to grant a Federal charter to Korean War Veterans Association, Incorporated.

S. 1708

At the request of Mr. DODD, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 1708, a bill to provide for the expansion of Federal efforts concerning the prevention, education, treatment, and research activities related to Lyme and other tick-borne diseases, including the establishment of a Tick-Borne Diseases Advisory Committee.

S. 1739

At the request of Mr. ROCKEFELLER, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 1739, a bill to amend section 35 of the Internal Revenue Code of 1986 to improve the health coverage tax credit, and for other purposes.

AMENDMENT NO. 2000

At the request of Mr. NELSON of Florida, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of amendment No. 2000 intended to be proposed to H.R. 1585, to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

AMENDMENT NO. 2067

At the request of Mr. KENNEDY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of amendment No. 2067 intended to be proposed to H.R. 1585, to authorize appropriations for fiscal year 2008 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. COLLINS (for herself, Mr. AKAKA, Mr. BENNETT, Mrs. BOXER, Ms. CANTWELL, Mrs. Clinton, Mr. COLEMAN, Mr. DURBIN, Mrs. DOLE, Ms. KLOBUCHAR, Ms. LANDRIEU, Mrs. LINCOLN, Mrs. MCCASKILL, Ms. MIKULSKI, Ms. MURKOWSKI, Mrs. MURRAY, Ms. SNOWE, Ms. STABENOW, and Mr. VOINOVICH):

S. 1841. A bill to provide a site for the National Women's History Museum in Washington, District of Columbia, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Ms. COLLINS. Mr. President, I rise to introduce the National Women's History Museum Act of 2007, a bill that would clear the way to locate a long-overdue historical and educational resource in our Nation's capital city.

In each of the last two Congresses, the Senate has approved earlier versions of this bill by unanimous consent. I appreciate that past support, and I appreciate the cosponsorship today from 18 of my colleagues, Senators AKAKA, BENNETT, BOXER, CANTWELL, CLINTON, COLEMAN, DURBIN, DOLE, KLOBUCHAR, LANDRIEU, LINCOLN, MCCASKILL, MIKULSKI, MURKOWSKI, MURRAY, SNOWE, STABENOW, and VOINOVICH.

Women constitute the majority of our population. They make invaluable contributions to our country, not only in traditional venues like the home, schools, churches, and volunteer organizations, but in Government, corporations, medicine, law, literature, sports, entertainment, the arts, and the military services. The need for a museum recognizing the contributions of American women is of long standing.

A presidential commission on commemorating women in American history concluded that, ''Efforts to implement an appropriate celebration of women's history in the next millennium should include the designation of a focal point for women's history in our Nation's capital.''

That report was issued in 1999. Nearly a decade later, although Congress has commendably made provisions for the National Museum for African American History and Culture, the National Law Enforcement Museum, and the National Building Museum, there is still no national institution in the capital region dedicated to women's role in our country's history.

The proposed legislation calls for no new Federal program and no new claims on the budget. It would simply direct the General Services Administration to negotiate and enter into an occupancy agreement with the National Women's History Museum, Inc. to establish a museum in the long-vacant Pavilion Annex of the Old Post Office building in Washington, DC.

The National Women's History Museum is a nonprofit, nonpartisan, educational institution based in the District of Columbia. Its mission is to research and present the historic contributions that women have made to all aspects of human endeavor, and to present the contributions that women have made to the Nation in their various roles in family, the economy, and society.

The Pavilion Annex to the Old Post Office was a commercial failure and remains a continuing drain on Federal maintenance budgets. Putting the building to use as a museum would provide lease payments and establish a new historical and educational destination site on Pennsylvania Avenue that would bring new visitor traffic and new economic activity to the neighborhood.

These are sound reasons for supporting this bill. The best reason, however, is the obligation to demonstrate the gratitude and respect we owe to the many generations of American women who have helped build, sustain, and advance our society. They deserve a building to present their stories, as well as the stories of pioneering women like abolitionist Harriet Tubman, Supreme Court Justice Sandra Day O'Connor, astronaut Sally Ride, and Secretary of State Madeleine Albright.

That women's roll of honor would also include a distinguished predecessor in my Senate seat, the late Senator Margaret Chase Smith, the first woman nominated for President of the United States by a major political party, and the first woman elected to both Houses of Congress. Senator Smith began representing Maine in the U.S. House of Representatives in 1940, won election to the Senate in 1948, and enjoyed bipartisan respect over her long career for her independence, integrity, wisdom, and decency. She remains my role model and, through the example of her public service, an exemplar of the virtues that would be honored in the National Women's History Museum.

I thank my colleagues for their past support of this effort, and urge them to renew that support for this bill.

By Mr. KENNEDY (for himself, Mr. KERRY, Mr. DODD, Ms. MIKULSKI, Mrs. CLINTON, Mr. OBAMA, Mr. SANDERS, Mr. INOUYE, Mr. LEVIN, Mr. AKAKA, Mr. FEINGOLD, Ms. CANTWELL, Mr. MENENDEZ, and Mr. WHITEHOUSE):

S. 1842. A bill to amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the Medicare

Program; to the Committee on Finance.

Mr. KENNEDY. Mr. President, it is a privilege to introduce the Safe Nursing and Patient Care Act today, and I am pleased to have my colleague from Massachusetts, Senator KERRY, joining me in this effort. This important bill will limit mandatory overtime for nurses in order to protect patient safety and improve working conditions for nurses.

The widespread insistence on mandatory overtime across the country means that over-worked nurses are often forced to provide care when they are too tired to perform their jobs. The result is unnecessary risk for their patients and for the nurses themselves. A recent study by the University of Pennsylvania School of Nursing found that nurses who work shifts of 12½ hours or more are three times more likely to commit errors than nurses who work a standard shift of 8½ hours or less.

A study by researchers at Columbia University Medical Center and RAND Corporation found that when nurses work too much overtime, their patients are more likely to suffer hospital-related infections.

These studies, and many more like them, compellingly illustrate the critical threat to patient safety when nurses are overworked.

The grueling conditions in which nurses are obliged to work jeopardizes the future of this essential profession. We face a critical shortage of nurses. The American Hospital Association reports that hospitals needed 118,000 more RNs to fill immediate vacancies in December 2005. This is an 8.5 percent vacancy rate, and it is expected to rise to 20 percent in coming years, undermining their ability to provide emergency care. In addition, nearly half a million trained nurses are not currently working in the nursing profession, even though they are desperately needed.

Job dissatisfaction and harsh overtime are major factors in the nursing shortage. As a 2004 report by the CDC concluded, poor working conditions are contributing to difficulties with retention and recruitment in nursing. Nurses are not treated with the respect they deserve in the workplace, and many caring nurses refuse to work in an environment in which they know they are putting their patients at risk.

Our Safe Nursing and Patient Care Act deals with these critical problems. By restricting mandatory overtime for nurses, the act helps ensure that nurses are able to provide the highest quality of care to their patients. By improving the quality of life of nurses, the act encourages more dedicated workers to enter nursing and to make it their lifetime career.

This legislation is obviously needed to protect public safety. Federal safety standards already limit work hours for pilots, flight attendants, truck drivers, railroad engineers and other professionals. We need to guarantee the same safe working conditions for nurses, who care for so many of our most vulnerable citizens.

Some hospitals have already taken action. In recent years, after negotiations with their nurses, Brockton Hospital and St. Vincent Hospital in Massachusetts have agreed to limit mandatory overtime. Mr. President, 11 States have adopted laws or regulations to end forced overtime. These limits will protect patients and improve working conditions for nurses, and will help in the recruitment and retention of nurses in the future.

Improving conditions for nurses is an essential part of our ongoing effort to reduce medical errors and improve patient outcomes. But it is also a matter of basic fairness and respect. Nurses perform one of the most difficult and important jobs in our society. They care about their patients and want to provide the best possible treatment. They cannot do their job when they're exhausted and overworked. Nurses, and the patients they care for, deserve better. The Safe Nursing and Patient Care Act respects the dignity of hard-working nurses, and I urge my colleagues to support it.

By Mr. KENNEDY (for himself, Mr. SPECTER, Mr. HARKIN, Mrs. CLINTON, Ms. SNOWE, Ms. MIKULSKI, Mr. OBAMA, Mr. DURBIN, Mr. DODD, Mr. LEAHY, Mrs. MCCASKILL, Mr. WHITEHOUSE, Mrs. BOXER, Ms. STABENOW, and Mrs. MURRAY):

S. 1843. A bill to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to clarify that an unlawful practice occurs each time compensation is paid pursuant to a discriminatory compensation decision or other practice, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, it's an honor to join my colleagues in introducing the Fair Pay Restoration Act to correct the Supreme Court's recent 5–4 decision in Ledbetter v. Goodyear Tire & Rubber Company, which undermined basic protection for workers against pay discrimination under the Civil Rights Act of 1964. The decision also undermines pay discrimination claims under the Americans with Disabilities Act and the Age Discrimination in Employment Act. Our bill would restore the clear intent of Congress when we passed these important laws that workers must have a reasonable time to file a pay discrimination claim after they become victims of discriminatory compensation.

No American should be denied equal pay for equal work. Employees' ability to provide for their children, save for retirement, and enjoy the benefit of their labor should not be limited by discrimination. The Court's decision undermined these bedrock principles by imposing unrealistically short time limits on such claims.

The jury in this case found that Goodyear Tire and Rubber Company discriminated against Lilly Ledbetter by downgrading her evaluations because she was a woman in a traditionally male job. For over a decade, the company used these discriminatory evaluations to pay her less than male workers who held the same position and performed the same duties. Supervisors at the plant where she worked were openly biased against women. One told her that ''the plant did not need women,'' and that they ''caused problems.'' Ms. Ledbetter's pay fell to 15 to 40 percent behind her male counterparts.

Finally, after years, she realized what was happening and filed suit for the back pay she had been unfairly denied. The jury found that the only reason Ms. Ledbetter was paid less was because she was a woman, and she was awarded full damages to correct this basic injustice.

The Supreme Court ruled against her, holding that she filed her lawsuit far too long after Goodyear first began to pay her less than her male colleagues. Never mind that she had no way of knowing at first that male workers were being paid more. Never mind that the company discriminated against her for decades, and that the discrimination continued with each new paycheck she received.

The Supreme Court's ruling defies both Congress's intent and common sense. Pay discrimination is not like other types of discrimination, because employees generally don't know what their colleagues earn, and such information is difficult to obtain.

Pay discrimination is not like being told ''You're fired,'' or ''You didn't get the job,'' when workers at least know they have been denied a job benefit. With pay discrimination, the paycheck typically comes in the mail, and employees usually have no idea if they have been paid fairly. They should be able to file a complaint within a reasonable time after receiving a discriminatory paycheck, instead of having to file the complaint soon after the company first decides to shortchange them for discriminatory reasons.

The decision actually creates a perverse incentive for workers to file lawsuits before they know a pay decision is based on discrimination. Workers who wait to learn the truth before filing a complaint of discrimination could be out of time. As a result, the decision will create unnecessary litigation as workers rush to beat the clock in their claims for equal pay.

The Supreme Court's decision also breaks faith with the Civil Rights Act of 1991, which was enacted with overwhelming bipartisan support, a vote of 93 to 5 in the Senate, and 381 to 38 in the House. The 1991 act had corrected this same problem in the context of seniority, overturning the Court's decision in a separate case. At the time, there was no need to clarify Title VII for pay discrimination claims, since

the courts were interpreting Title VII correctly. Obviously, Congress now needs to act again to ensure that the law adequately protects workers against pay discrimination.

The Congressional Budget Office has made clear that this bill will not create costs for the Equal Employment Opportunity Commission or the Federal courts. It simply restores the status quo as Congress intended and as it existed on May 28, 2007, before the Ledbetter decision was made.

It is unacceptable that some workers are unable to file a lawsuit against ongoing discrimination. Yet that is what happened to Lilly Ledbetter. I hope that all of us, on both sides of the aisle, can join in correcting this obvious wrong.

In recent years, the Supreme Court also has undermined other bipartisan civil rights laws in ways Congress never intended. It has limited the Age Discrimination in Employment Act, made it harder to protect children who are harassed in school, and eliminated peoples' right to challenge practices with a discriminatory impact on their access to public services. The Court has also made it more difficult for workers with disabilities to prove that they're entitled to the protection of the law.

Congress needs to correct these problems as well. The Fair Pay Restoration Act makes sure that what happened to Lilly Ledbetter will not happen to any others. As Justice Ginsburg wrote in her powerful dissent, the Court's decision is ''totally at odds with the robust protection against employment discrimination Congress intended.'' I urge my colleagues, Republicans and Democrats alike, to restore the law as it was before the decision, so that victims of ongoing pay discrimination have a reasonable time to file their claims.

COLLEGE COST REDUCTION ACT OF 2007

On Thursday, July 19, 2007, the Senate passed H.R. 2669.

The bill, as amended, is as follows:

H.R. 2669

Resolved, That the bill from the House of Representatives (H.R. 2669) entitled ''An Act to provide for reconciliation pursuant to section 601 of the concurrent resolution on the budget for fiscal year 2008.'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Higher Education Access Act of 2007''.

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

TITLE I—GRANTS TO STUDENTS IN ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION

SEC. 101. TUITION SENSITIVITY.

(a) AMENDMENT.—Section 401(b) (20 U.S.C. 1070a(b)) is amended by striking paragraph (3).

(b) AUTHORIZATION AND APPROPRIATION OF FUNDS.—There is authorized to be appropriated, and there is appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of Education to carry out the amendment made by subsection (a), $5,000,000 for fiscal year 2008.

SEC. 102. PROMISE GRANTS.

(a) AMENDMENT.—Subpart 1 of part A of title IV (20 U.S.C. 1070a et seq.) is amended by adding at the end the following:

''SEC. 401B. PROMISE GRANTS.

''(a) GRANTS.—

''(1) IN GENERAL.—From amounts appropriated under subsection (e) for a fiscal year and subject to subsection (b), the Secretary shall award grants to students in the same manner as the Secretary awards Federal Pell Grants to students under section 401, except that—

''(A) at the beginning of each award year, the Secretary shall establish a maximum and minimum award level based on amounts made available under subsection (e);

''(B) the Secretary shall only award grants under this section to students eligible for a Federal Pell Grant for the award year; and

''(C) when determining eligibility for the awards under this section, the Secretary shall consider only those students who submitted a Free Application for Federal Student Aid or other common reporting form under section 483 as of July 1 of the award year for which the determination is made.

''(2) STUDENTS WITH THE GREATEST NEED.—The Secretary shall ensure grants are awarded under this section to students with the greatest need as determined in accordance with section 471.

''(b) COST OF ATTENDANCE LIMITATION.—A grant awarded under this section for an award year shall be awarded in an amount that does not exceed—

''(1) the student's cost of attendance for the award year; less

''(2) an amount equal to the sum of—

''(A) the expected family contribution for the student for the award year; and

''(B) any Federal Pell Grant award received by the student for the award year.

''(c) SUPPLEMENT NOT SUPPLANT.—Grants awarded from funds made available under subsection (e) shall be used to supplement, and not supplant, other Federal, State, or institutional grant funds.

''(d) USE OF EXCESS FUNDS.—

''(1) FIFTEEN PERCENT OR LESS.—If, at the end of a fiscal year, the funds available for making grant payments under this section exceed the amount necessary to make the grant payments required under this section to eligible students by 15 percent or less, then all of the excess funds shall remain available for making grant payments under this section during the next succeeding fiscal year.

''(2) MORE THAN FIFTEEN PERCENT.—If, at the end of a fiscal year, the funds available for making grant payments under this section exceed the amount necessary to make the grant payments required under this section to eligible students by more than 15 percent, then all of such funds shall remain available for making such grant payments but grant payments may be made under this paragraph only with respect to awards for that fiscal year.

''(e) AUTHORIZATION AND APPROPRIATION OF FUNDS.—

''(1) IN GENERAL.—There are authorized to be appropriated, and there are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of Education to carry out this section—

''(A) $2,620,000,000 for fiscal year 2008;

''(B) $3,040,000,000 for fiscal year 2009;

''(C) $3,460,000,000 for fiscal year 2010;

''(D) $3,900,000,000 for fiscal year 2011;

''(E) $4,020,000,000 for fiscal year 2012;

''(F) $10,000,000 for fiscal year 2013;

''(G) $3,650,000,000 for fiscal year 2014;

''(H) $3,850,000,000 for fiscal year 2015;

''(I) $4,175,000,000 for fiscal year 2016; and

''(J) $4,180,000,000 for fiscal year 2017.

''(2) AVAILABILITY OF FUNDS.—Funds appropriated under paragraph (1) for a fiscal year shall remain available through the last day of the fiscal year immediately succeeding the fiscal year for which the funds are appropriated.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on July 1, 2008.

TITLE II—STUDENT LOAN BENEFITS, TERMS, AND CONDITIONS

SEC. 201. DEFERMENTS.

(a) FISL.—Section 427(a)(2)(C)(iii) (20 U.S.C. 1077(a)(2)(C)(iii)) is amended by striking ''3 years'' and inserting ''6 years''.

(b) INTEREST SUBSIDIES.— Section 428(b)(1)(M)(iv) (20 U.S.C. 1078(b)(1)(M)(iv)) is amended by striking ''3 years'' and inserting ''6 years''.

(c) DIRECT LOANS.—Section 455(f)(2)(D) (20 U.S.C. 1087e(f)(2)(D)) is amended by striking ''3 years'' and inserting ''6 years''.

(d) PERKINS.—Section 464(c)(2)(A)(iv) (20 U.S.C. 1087dd(c)(2)(A)(iv)) is amended by striking ''3 years'' and inserting ''6 years''.

(e) EFFECTIVE DATE AND APPLICABILITY.—The amendments made by this section shall take effect on July 1, 2008, and shall only apply with respect to the loans made to a borrower of a loan under title IV of the Higher Education Act of 1965 who obtained the borrower's first loan under such title prior to October 1, 2012.

SEC. 202. STUDENT LOAN DEFERMENT FOR CERTAIN MEMBERS OF THE ARMED FORCES.

(a) FEDERAL FAMILY EDUCATION LOANS.—Section 428(b)(1)(M)(iii) (20 U.S.C. 1078(b)(1)(M)(iii)) is amended—

(1) in the matter preceding subclause (I), by striking ''not in excess of 3 years'';

(2) in subclause (II), by striking ''; or'' and inserting a comma; and

(3) by adding at the end the following: ''and for the 180-day period following the demobilization date for the service described in subclause (I) or (II); or''.

(b) DIRECT LOANS.—Section 455(f)(2)(C) (20 U.S.C. 1087e(f)(2)(C)) is amended—

(1) in the matter preceding clause (i), by striking ''not in excess of 3 years'';

(2) in clause (ii), by striking ''; or'' and inserting a comma; and

(3) by adding at the end the following: ''and for the 180-day period following the demobilization date for the service described in clause (i) or (ii); or''.

(c) PERKINS LOANS.—Section 464(c)(2)(A)(iii) (20 U.S.C. 1087dd(c)(2)(A)(iii)) is amended—

(1) in the matter preceding subclause (I), by striking ''not in excess of 3 years'';

(2) in subclause (II), by striking the semicolon and inserting a comma; and

(3) by adding at the end the following: ''and for the 180-day period following the demobilization date for the service described in subclause (I) or (II);''.

(d) APPLICABILITY.—Section 8007(f) of the Higher Education Reconciliation Act of 2005 (20 U.S.C. 1078 note) is amended by striking ''loans for which'' and all that follows through the period at the end and inserting ''all loans under title IV of the Higher Education Act of 1965.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2008.

SEC. 203. INCOME-BASED REPAYMENT PLANS.

(a) FFEL.—Section 428 (as amended by sections 201(b) and 202(a)) (20 U.S.C. 1078) is further amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (D), by striking ''income contingent'' and inserting ''income-based''; and

(ii) in subparagraph (E)(i), by striking ''income-sensitive'' and inserting ''income-based''; and

(B) by striking clause (iii) of paragraph (9)(A) and inserting the following:

''(iii) an income-based repayment plan, with parallel terms, conditions, and benefits as the income-based repayment plan described in subsections (e) and (d)(1)(D) of section 455, except that—

''(I) the plan described in this clause shall not be available to a borrower of an excepted PLUS loan (as defined in section 455(e)(10)) or of a loan made under 428C that includes an excepted PLUS loan;

''(II) in lieu of the process of obtaining Federal income tax returns and information from the Internal Revenue Service, as described in section 455(e)(1), the borrower shall provide the lender with a copy of the Federal income tax return and return information for the borrower (and, if applicable, the borrower's spouse) for the purposes described in section 455(e)(1), and the lender shall determine the repayment obligation on the loan, in accordance with the procedures developed by the Secretary;

''(III) in lieu of the requirements of section 455(e)(3), in the case of a borrower who chooses to repay a loan made, insured, or guaranteed under this part pursuant to income-based repayment and for whom the adjusted gross income is unavailable or does not reasonably reflect the borrower's current income, the borrower shall provide the lender with other documentation of income that the Secretary has determined is satisfactory for similar borrowers of loans made under part D;

''(IV) the Secretary shall pay any interest due and not paid for under the repayment schedule described in section 455(e)(4) for a loan made, insured, or guaranteed under this part in the same manner as the Secretary pays any such interest under section 455(e)(6) for a Federal Direct Stafford Loan;

''(V) the Secretary shall assume the obligation to repay an outstanding balance of principal and interest due on all loans made, insured, or guaranteed under this part (other than an excepted PLUS Loan or a loan under section 428C that includes an excepted PLUS loan), for a borrower who satisfies the requirements of subparagraphs (A) and (B) of section 455(e)(7), in the same manner as the Secretary cancels such outstanding balance under section 455(e)(7); and

''(VI) in lieu of the notification requirements under section 455(e)(8), the lender shall notify a borrower of a loan made, insured, or guaranteed under this part who chooses to repay such loan pursuant to income-based repayment of the terms and conditions of such plan, in accordance with the procedures established by the Secretary, including notification that—

''(aa) the borrower shall be responsible for providing the lender with the information necessary for documentation of the borrower's income, including income information for the borrower's spouse (as applicable); and

''(bb) if the borrower considers that special circumstances warrant an adjustment, as described in section 455(e)(8)(B), the borrower may contact the lender, and the lender shall determine whether such adjustment is appropriate, in accordance with the criteria established by the Secretary; and'';

(2) in subsection (e)—

(A) in the subsection heading, by striking ''INCOME-SENSITIVE'' and inserting ''INCOME-BASED'';

(B) in paragraph (1)—

(i) by striking ''income-sensitive repayment'' and inserting ''income-based repayment''; and

(ii) by inserting ''and for the public service loan forgiveness program under section 455(m), in accordance with section 428C(b)(5)'' before the semicolon; and

(C) in paragraphs (2) and (3), by striking ''income-sensitive'' each place the term occurs and inserting ''income-based''; and

(3) in subsection (m)—

(A) in the subsection heading, by striking ''INCOME CONTINGENT'' and inserting ''INCOME-BASED'';

(B) in paragraph (1), by striking ''income contingent repayment plan'' and all that follows through the period at the end and inserting ''income-based repayment plan as described in subsection (b)(9)(A)(iii) and section 455(d)(1)(D).''; and

(C) in the paragraph heading of paragraph (2), by striking ''INCOME CONTINGENT'' and inserting ''INCOME-BASED''.

(b) CONSOLIDATION LOANS.—Section 428C (20 U.S.C. 1078–3) is amended—

(1) in subsection (a)(3)(B)(i)(V), by striking ''for the purposes of obtaining an income contingent repayment plan,'' and inserting ''for the purpose of using the public service loan forgiveness program under section 455(m),'';

(2) in subsection (b)(5)—

(A) in the first sentence, by striking '', or is unable to obtain a consolidation loan with income-sensitive repayment terms acceptable to the borrower from such a lender,'' and inserting '', or chooses to obtain a consolidation loan for the purposes of using the public service loan forgiveness program offered under section 455(m),''; and

(B) in the second sentence, by striking ''income contingent repayment under part D of this title'' and inserting ''income-based repayment''; and

(3) in subsection (c)—

(A) in paragraph (2)(A)—

(i) in the first sentence, by striking ''of graduated or income-sensitive repayment schedules, established by the lender in accordance with the regulations of the Secretary.'' and inserting ''of graduated repayment schedules, established by the lender in accordance with the regulations of the Secretary, and income-based repayment schedules, established pursuant to regulations by the Secretary.''; and

(ii) in the second sentence, by striking ''Except as required'' and all that follows through ''subsection (b)(5),'' and inserting ''Except as required by such income-based repayment schedules,''; and

(B) in paragraph (3)(B), by striking ''income contingent repayment offered by the Secretary under subsection (b)(5)'' and inserting ''income-based repayment''.

(c) DIRECT LOANS.—Section 455 (as amended by sections 201(c) and 202(b)) (20 U.S.C. 1087e) is further amended—

(1) in subsection (d)—

(A) in paragraph (1)(D)—

(i) by striking ''income contingent repayment plan'' and inserting ''income-based repayment plan''; and

(ii) by striking ''a Federal Direct PLUS loan'' and inserting ''an excepted PLUS loan or any Federal Direct Consolidation Loan that includes an excepted PLUS loan (as defined in subsection (e)(10))''; and

(B) in paragraph (5)(B), by striking ''income contingent'' and inserting ''income-based''; and

(2) in subsection (e)—

(A) in the subsection heading, by striking ''INCOME CONTINGENT'' and inserting ''INCOME-BASED'';

(B) in paragraphs (1), (2), and (3), by striking ''income contingent'' each place the term appears and inserting ''income-based'';

(C) in paragraph (4)—

(i) by striking ''Income contingent'' and inserting ''Income-based''; and

(ii) by striking ''Secretary.'' and inserting ''Secretary, except that the monthly required payment under such schedule shall not exceed 15 percent of the result obtained by calculating the amount by which—

''(A) the borrower's adjusted gross income; exceeds

''(B) 150 percent of the poverty line applicable to the borrower's family size, as determined under section 673(2) of the Community Service Block Grant Act, divided by 12.'';

(D) in paragraph (5), by striking ''income contingent'' and inserting ''income-based'';

(E) by redesignating paragraph (6) as paragraph (8);

(F) by inserting after paragraph (5) the following:

''(6) TREATMENT OF INTEREST.—In the case of a Federal Direct Stafford Loan, any interest due and not paid for under paragraph (2) shall be paid by the Secretary.

''(7) LOAN FORGIVENESS.—The Secretary shall cancel the obligation to repay an outstanding balance of principal and interest due on all loans made under this part, or assume the obligation to repay an outstanding balance of principal and interest due on all loans made, insured, or guaranteed under part B, (other than an excepted PLUS Loan, or any Federal Direct Consolidation Loan or loan under section 428C that includes an excepted PLUS loan) to a borrower who—

''(A) makes the election under this subsection or under section 428(b)(9)(A)(iii); and

''(B) for a period of time prescribed by the Secretary not to exceed 25 years (including any period during which the borrower is in deferment due to an economic hardship described in section 435(o)), meets 1 of the following requirements with respect to each payment made during such period:

''(i) Has made the payment under this subsection or section 428(b)(9)(A)(iii).

''(ii) Has made the payment under a standard repayment plan under section 428(b)(9)(A)(i) or 455(d)(1)(A).

''(iii) Has made a payment that counted toward the maximum repayment period under income-sensitive repayment under section 428(b)(9)(A)(iii) or income contingent repayment under section 455(d)(1)(D), as each such section was in effect on June 30, 2008.

''(iv) Has made a reduced payment of not less than the amount required under subsection (e), pursuant to a forbearance agreement under section 428(c)(3)(A)(i) for a borrower described in 428(c)(3)(A)(i)(II).'';

(G) in the matter preceding subparagraph (A) of paragraph (8) (as redesignated by subparagraph (E)), by striking ''income contingent'' and inserting ''income-based''; and

(H) by adding at the end the following:

''(9) RETURN TO STANDARD REPAYMENT.—A borrower who is repaying a loan made under this part pursuant to income-based repayment may choose, at any time, to terminate repayment pursuant to income-based repayment and repay such loan under the standard repayment plan.

''(10) DEFINITION OF EXCEPTED PLUS LOAN.—In this subsection, the term 'excepted PLUS loan' means a Federal Direct PLUS loan or a loan under section 428B that is made, insured, or guaranteed on behalf of a dependent student.''.

(d) CONFORMING AMENDMENTS AND TECHNICAL CORRECTIONS.—The Act (20 U.S.C. 1001 et seq.) is further amended—

(1) in section 427(a)(2)(H) (20 U.S.C. 1077(a)(2)(H))—

(A) by striking ''or income-sensitive''; and

(B) by inserting ''or income-based repayment schedule established pursuant to regulations by the Secretary'' before the semicolon at the end; and

(2) in section 455(d)(1)(C) (20 U.S.C. 1087e(d)(1)(C)), by striking ''428(b)(9)(A)(v)'' and inserting ''428(b)(9)(A)(iv)''.

(e) TRANSITION PROVISION.—A student who, as of June 30, 2008, elects to repay a loan under part B or part D of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq., 1087a et seq.) through an income-sensitive repayment plan under section 428(b)(9)(A)(iii) of such Act (20 U.S.C. 1078(b)(9)(A)(iii)) or an income contingent repayment plan under section 455(d)(1)(D) of such Act (20 U.S.C. 1087e(d)(1)(D)) (as each such section was in effect on the day before the date of enactment of this Act) shall have the option to continue repayment under such section (as such section was in effect on such day), or

may elect, beginning on July 1, 2008, to use the income-based repayment plan under section 428(b)(9)(A)(iii) or 455(d)(1)(D) (as applicable) of the Higher Education Act of 1965, as amended by this section.

(f) EFFECTIVE DATE AND APPLICABILITY.—The amendments made by this section shall take effect on July 1, 2008, and shall only apply with respect to a borrower of a loan under title IV of the Higher Education Act of 1965 who obtained the borrower's first loan under such title prior to October 1, 2012.

TITLE III—FEDERAL FAMILY EDUCATION LOAN PROGRAM

SEC. 301. REDUCTION OF LENDER INSURANCE PERCENTAGE.

(a) AMENDMENT.—Section 428(b)(1)(G) (20 U.S.C. 1078(b)(1)(G)) is amended—

(1) in the matter preceding clause (i), by striking ''insures 98 percent'' and inserting ''insures 97 percent'';

(2) in clause (i), by inserting ''and'' after the semicolon;

(3) by striking clause (ii); and

(4) by redesignating clause (iii) as clause (ii).

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect with respect to loans made on or after October 1, 2007.

SEC. 302. GUARANTY AGENCY COLLECTION RETENTION.

Clause (ii) of section 428(c)(6)(A) (20 U.S.C. 1078(c)(6)(A)(ii)) is amended to read as follows:

''(ii) an amount equal to 24 percent of such payments for use in accordance with section 422B, except that—

''(I) beginning October 1, 2003 and ending September 30, 2007, this subparagraph shall be applied by substituting '23 percent' for '24 percent'; and

''(II) beginning October 1, 2007, this subparagraph shall be applied by substituting '16 percent' for '24 percent'.''.

SEC. 303. ELIMINATION OF EXCEPTIONAL PERFORMER STATUS FOR LENDERS.

(a) ELIMINATION OF STATUS.—Part B of title IV (20 U.S.C. 1071 et seq.) is amended by striking section 428I (20 U.S.C. 1078–9).

(b) CONFORMING AMENDMENTS.—Part B of title IV is further amended—

(1) in section 428(c)(1) (20 U.S.C. 1078(c)(1))—

(A) by striking subparagraph (D); and

(B) by redesignating subparagraphs (E) through (H) as subparagraphs (D) through (G), respectively; and

(2) in section 438(b)(5) (20 U.S.C. 1087–1(b)(5)), by striking the matter following subparagraph (B).

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on October 1, 2007, except that section 428I of the Higher Education Act of 1965 (as in effect on the day before the date of enactment of this Act) shall apply to eligible lenders that received a designation under subsection (a) of such section prior to October 1, 2007, for the remainder of the year for which the designation was made.

SEC. 304. DEFINITIONS.

(a) AMENDMENTS.—Section 435 (20 U.S.C. 1085) is amended—

(1) in subsection (o)(1)—

(A) in subparagraph (A)(ii), by striking ''100 percent of the poverty line for a family of 2'' and inserting ''150 percent of the poverty line applicable to the borrower's family size''; and

(B) in subparagraph (B)(ii), by striking ''to a family of two'' and inserting ''to the borrower's family size''; and

(2) by adding at the end the following:

''(p) ELIGIBLE NOT-FOR-PROFIT HOLDER.—

''(1) DEFINITION OF ELIGIBLE NOT-FOR-PROFIT HOLDER.—The term 'eligible not-for-profit holder' means an eligible lender under subsection (d) (except for an eligible lender described in subsection (d)(1)(E)) that requests a special allowance payment under section 438(b)(2)(I)(vi)(II) and that is—

''(A) a State of the United States, or a political subdivision thereof, or an authority, agency, or other instrumentality thereof (including such entities that are eligible to issue bonds described in section 1.103–1 of title 26, Code of Federal Regulations, or section 144(b) of the Internal Revenue Code of 1986);

''(B) an entity described in section 150(d)(2) of such Code that has not made the election described in section 150(d)(3) of such Code;

''(C) an entity described in section 501(c)(3) of such Code; or

''(D) a trustee acting as an eligible lender on behalf of an entity described in subparagraph (A), (B), or (C),

except that no entity described in subparagraph (A), (B), or (C) shall be owned or controlled in whole or in part by a for-profit entity.

''(2) PROHIBITION.—In the case of a loan for which the special allowance payment is calculated under section 438(b)(2)(I)(vi)(II) and that is sold by the eligible not-for-profit holder holding the loan to a for-profit entity or to an entity that is not an eligible not-for-profit holder, the special allowance payment for such loan shall, beginning on the date of the sale, no longer be calculated under section 438(b)(2)(I)(vi)(II) and shall be calculated under section 438(b)(2)(I)(vi)(I) instead.

''(3) REGULATIONS.—Not later than 1 year after the date of enactment of the Higher Education Access Act of 2007, the Secretary shall promulgate regulations in accordance with the provisions of this subsection.''.

(b) APPLICABILITY.—The amendment made by subsection (a)(1) shall only apply with respect to any borrower of a loan under title IV of the Higher Education Act of 1965 who obtained the borrower's first loan under such title prior to October 1, 2012.

SEC. 305. SPECIAL ALLOWANCES.

(a) REDUCTION OF LENDER SPECIAL ALLOWANCE PAYMENTS.—Section 438(b)(2)(I) (20 U.S.C. 1087–1(b)(2)(I)) is amended—

(1) in clause (i), by striking ''(iii), and (iv)'' and inserting ''(iii), (iv), and (vi)''; and

(2) by adding at the end the following:

''(vi) REDUCTION FOR LOANS DISBURSED ON OR AFTER OCTOBER 1, 2007.—With respect to a loan on which the applicable interest rate is determined under section 427A(l) and for which the first disbursement of principal is made on or after October 1, 2007, the special allowance payment computed pursuant to this subparagraph shall be computed—

''(I) for loans held by an eligible lender not described in subclause (II)—

''(aa) by substituting '1.24 percent' for '1.74 percent' in clause (ii);

''(bb) by substituting '1.84 percent' for '2.34 percent' each place the term appears in this subparagraph;

''(cc) by substituting '1.84 percent' for '2.64 percent' in clause (iii); and

''(dd) by substituting '2.14 percent' for '2.64 percent' in clause (iv); and

''(II) for loans held by an eligible not-for-profit holder—

''(aa) by substituting '1.99 percent' for '2.34 percent' each place the term appears in this subparagraph;

''(bb) by substituting '1.39 percent' for '1.74 percent' in clause (ii);

''(cc) by substituting '1.99 percent' for '2.64 percent' in clause (iii); and

''(dd) by substituting '2.29 percent' for '2.64 percent' in clause (iv).''.

(b) INCREASED LOAN FEES FROM LENDERS.—Paragraph (2) of section 438(d) (20 U.S.C. 1087–1(d)(2)) is amended to read as follows:

''(2) AMOUNT OF LOAN FEES.—The amount of the loan fee which shall be deducted under paragraph (1), but which may not be collected from the borrower, shall be equal to 1.0 percent of the principal amount of the loan with respect to any loan under this part for which the first disbursement was made on or after October 1, 2007.''.

TITLE IV—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

SEC. 401. LOAN FORGIVENESS FOR PUBLIC SERVICE EMPLOYEES.

Section 455 (as amended by sections 201(c), 202(b), and 203(c)) (20 U.S.C. 1087e) is further amended by adding at the end the following:

''(m) REPAYMENT PLAN FOR PUBLIC SERVICE EMPLOYEES.—

''(1) IN GENERAL.—The Secretary shall cancel the balance of interest and principal due, in accordance with paragraph (2), on any eligible Federal Direct Loan not in default for an eligible borrower who—

''(A) has made 120 monthly payments on the Federal Direct Loan after October 1, 2007, pursuant to any combination of—

''(i) payments under an income-based repayment plan under section 455(d)(1)(D);

''(ii) payments under a standard repayment plan under section 455(d)(1)(A); or

''(iii) monthly payments under a repayment plan under section 455(d)(1) of not less than the monthly amount calculated under section 455(d)(1)(A); and

''(B)(i) is employed in a public service job at the time of such forgiveness; and

''(ii) has been employed in a public service job during the period in which the borrower makes each of the 120 payments described in subparagraph (A).

''(2) LOAN CANCELLATION AMOUNT.—After the conclusion of the employment period described in paragraph (1), the Secretary shall cancel the obligation to repay, for each year during such period described in paragraph (1)(B)(ii) for which the eligible borrower submits documentation to the Secretary that the borrower's annual adjusted gross income or annual earnings were less than or equal to $65,000, 1/10 of the amount of the balance of principal and interest due as of the time of such cancellation, on the eligible Federal Direct Loans made to the borrower under this part.

''(3) DEFINITIONS.—In this subsection:

''(A) ELIGIBLE BORROWER.—The term 'eligible borrower' means a borrower who submits documentation to the Secretary that the borrower's annual adjusted gross income or annual earnings is less than or equal to $65,000.

''(B) ELIGIBLE FEDERAL DIRECT LOAN.—The term 'eligible Federal Direct Loan' means a Federal Direct Stafford Loan, Federal Direct PLUS Loan, Federal Direct Unsubsidized Loan, or a Federal Direct Consolidation Loan if such consolidation loan was obtained by the borrower under section 428C(b)(5) or in accordance with section 428C(a)(3)(B)(i)(V).

''(C) PUBLIC SERVICE JOB.—In this paragraph, the term 'public service job' means—

''(i) a full-time job in public emergency management, government, public safety, public law enforcement, public health, public education, public early childhood education, public child care, social work in a public child or family service agency, public services for individuals with disabilities, public services for the elderly, public interest legal services (including prosecution or public defense), public library sciences, public school library sciences, or other public school-based services; or

''(ii) teaching as a full-time faculty member at a Tribal College or University as defined in section 316(b).''.

SEC. 402. UNIT COST CALCULATION FOR GUARANTY AGENCY ACCOUNT MAINTENANCE FEES.

Section 458(b) (20 U.S.C. 1087h(b)) is amended—

(1) by striking ''Account'' and inserting the following:

''(1) FOR FISCAL YEARS 2006 AND 2007.—For each of the fiscal years 2006 and 2007, account''; and

(2) by adding at the end the following:

''(2) FOR FISCAL YEAR 2008 AND SUCCEEDING FISCAL YEARS.—

''(A) IN GENERAL.—For fiscal year 2008 and each succeeding fiscal year, the Secretary shall

calculate the account maintenance fees payable to guaranty agencies under subsection (a)(3), on a per-loan cost basis in accordance with subparagraph (B).

''(B) AMOUNT DETERMINATION.—To determine the amount that shall be paid under subsection (a)(3) per outstanding loan guaranteed by a guaranty agency for fiscal year 2008 and succeeding fiscal years, the Secretary shall—

''(i) establish the per-loan cost basis amount by dividing the total amount of account maintenance fees paid under subsection (a)(3) for fiscal year 2006 by the number of loans under part B that were outstanding for that fiscal year; and

''(ii) for subsequent fiscal years, adjust the amount determined under clause (i) as the Secretary determines necessary to account for inflation.''.

TITLE V—FEDERAL PERKINS LOANS

SEC. 501. DISTRIBUTION OF LATE COLLECTIONS.

Section 466(b) (20 U.S.C. 1087ff(b)) is amended by striking ''March 31, 2012'' and inserting ''September 30, 2012''.

TITLE VI—NEED ANALYSIS

SEC. 601. SUPPORT FOR WORKING STUDENTS.

(a) DEPENDENT STUDENTS.—Subparagraph (D) of section 475(g)(2) (20 U.S.C. 1087oo(g)(2)(D)) is amended to read as follows:

''(D) an income protection allowance of the following amount (or a successor amount prescribed by the Secretary under section 478):

''(i) for academic year 2009–2010, $3,750;

''(ii) for academic year 2010–2011, $4,500;

''(iii) for academic year 2011–2012, $5,250; and

''(iv) for academic year 2012–2013, $6,000;''.

(b) INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE.—Clause (iv) of section 476(b)(1)(A) (20 U.S.C. 1087pp(b)(1)(A)(iv)) is amended to read as follows:

''(iv) an income protection allowance of the following amount (or a successor amount prescribed by the Secretary under section 478):

''(I) for single or separated students, or married students where both are enrolled pursuant to subsection (a)(2)—

''(aa) for academic year 2009–2010, $7,000;

''(bb) for academic year 2010–2011, $7,780;

''(cc) for academic year 2011–2012, $8,550; and

''(dd) for academic year 2012–2013, $9,330; and

''(II) for married students where 1 is enrolled pursuant to subsection (a)(2)—

''(aa) for academic year 2009–2010, $11,220;

''(bb) for academic year 2010–2011, $12,460;

''(cc) for academic year 2011–2012, $13,710; and

''(dd) for academic year 2012–2013, $14,960;''.

(c) INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE.—Paragraph (4) of section 477(b) (20 U.S.C. 1087qq(b)(4)) is amended to read as follows:

''(4) INCOME PROTECTION ALLOWANCE.—The income protection allowance is determined by the tables described in subparagraphs (A) through (D) (or a successor table prescribed by the Secretary under section 478).

''(A) ACADEMIC YEAR 2009–2010.—For academic year 2009–2010, the income protection allowance is determined by the following table:

''Income Protection Allowance

Family Size	Number in College				
	1	2	3	4	5
2	$17,720	$14,690			
3	22,060	19,050	$16,020		
4	27,250	24,220	21,210	$18,170	
5	32,150	29,120	26,100	23,070	$20,060
6	37,600	34,570	31,570	28,520	25,520

NOTE: For each additional family member, add $4,240.
For each additional college student, subtract $3,020.

''(B) ACADEMIC YEAR 2010–2011.—For academic year 2010–2011, the income protection allowance is determined by the following table:

''Income Protection Allowance

Family Size	Number in College				
	1	2	3	4	5
2	$19,690	$16,330			
3	24,510	21,160	$17,800		
4	30,280	26,910	23,560	$20,190	
5	35,730	32,350	29,000	25,640	$22,290
6	41,780	38,410	35,080	31,690	28,350

NOTE: For each additional family member, add $4,710.
For each additional college student, subtract $3,350.

''(C) ACADEMIC YEAR 2011–2012.—For academic year 2011–2012, the income protection allowance is determined by the following table:

''Income Protection Allowance

Family Size	Number in College				
	1	2	3	4	5
2	$21,660	$17,960			
3	26,960	23,280	$19,580		
4	33,300	29,600	25,920	$22,210	
5	39,300	35,590	31,900	28,200	$24,520
6	45,950	42,250	38,580	34,860	31,190

NOTE: For each additional family member, add $5,180.
For each additional college student, subtract $3,690.

''(D) ACADEMIC YEAR 2012–2013.—For academic year 2012–2013, the income protection allowance is determined by the following table:

''Income Protection Allowance

Family Size	Number in College				
	1	2	3	4	5
2	$23,630	$19,590			
3	29,420	25,400	$21,360		
4	36,330	32,300	28,280	$24,230	
5	42,870	38,820	34,800	30,770	$26,750
6	50,130	46,100	42,090	38,030	34,020

NOTE: For each additional family member, add $5,660.
For each additional college student, subtract $4,020.''.

(d) UPDATED TABLES AND AMOUNTS.—Section 478(b) (20 U.S.C. 1087rr(b)) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) REVISED TABLES.—

''(A) IN GENERAL.—For each academic year after academic year 2008–2009, the Secretary shall publish in the Federal Register a revised

table of income protection allowances for the purpose of such sections, subject to subparagraphs (B) and (C).

''(B) TABLE FOR INDEPENDENT STUDENTS.—

''(i) ACADEMIC YEARS 2009–2010 THROUGH 2012–2013.—For each of the academic years 2009–2010 through 2012–2013, the Secretary shall not develop a revised table of income protection allowances under section 477(b)(4) and the table specified for such academic year under subparagraphs (A) through (D) of such section shall apply.

''(ii) OTHER ACADEMIC YEARS.—For each academic year after academic year 2012–2013, the Secretary shall develop the revised table of income protection allowances by increasing each of the dollar amounts contained in the table of income protection allowances under section 477(b)(4)(D) by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 2011 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $10.

''(C) TABLE FOR PARENTS.—For each academic year after academic year 2008–2009, the Secretary shall develop the revised table of income protection allowances under section 475(c)(4) by increasing each of the dollar amounts contained in the table by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 1992 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $10.''; and

(2) in paragraph (2), by striking ''shall be developed'' and all that follows through the period at the end and inserting ''shall be developed for each academic year after academic year 2012–2013, by increasing each of the dollar amounts contained in such section for academic year 2012–2013 by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary) between December 2011 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $10.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2009.

SEC. 602. AUTOMATIC ZERO IMPROVEMENTS.

(a) IN GENERAL.—Section 479(c) (20 U.S.C. 1087ss(c)) is amended—

(1) in paragraph (1)(B), by striking ''20,000'' and inserting ''$30,000''; and

(2) in paragraph (2)(B), by striking ''$20,000'' and inserting ''$30,000''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 2009.

SEC. 603. DISCRETION OF STUDENT FINANCIAL AID ADMINISTRATORS.

The third sentence of section 479A(a) (20 U.S.C. 1087tt(a)) is amended—

(1) by inserting ''or an independent student'' after ''family member''; and

(2) by inserting ''a change in housing status that results in homelessness (as defined in section 103 of the McKinney-Vento Homeless Assistance Act),'' after ''under section 487,''.

SEC. 604. DEFINITIONS.

(a) IN GENERAL.—Section 480 (20 U.S.C. 1087vv) is amended—

(1) in subsection (a)(2)—

(A) by striking ''and no portion'' and inserting ''no portion''; and

(B) by inserting ''and no distribution from any qualified education benefit described in subsection (f)(3) that is not subject to Federal income tax,'' after ''1986,'';

(2) in subsection (d)—

(A) by redesignating paragraphs (1), (2), (3) through (6), and (7) as subparagraphs (A), (B), (D) through (G), and (I), respectively, and indenting appropriately;

(B) by striking ''INDEPENDENT STUDENT.—The term'' and inserting ''INDEPENDENT STUDENT.—

''(1) DEFINITION.—The term'';

(C) by striking subparagraph (B) (as redesignated by subparagraph (A)) and inserting the following:

''(B) is an orphan, in foster care, or a ward of the court, or was in foster care when the individual was 13 years of age or older or a ward of the court until the individual reached the age of 18;

''(C) is an emancipated minor or is in legal guardianship as determined by a court of competent jurisdiction in the individual's State of legal residence;'';

(D) in subparagraph (G) (as redesignated by subparagraph (A)), by striking ''or'' after the semicolon;

(E) by inserting after subparagraph (G) (as redesignated by subparagraph (A)) the following:

''(H) has been verified as an unaccompanied youth who is a homeless child or youth (as such terms are defined in section 725 of the McKinney-Vento Homeless Assistance Act) during the school year in which the application is submitted, by—

''(i) a local educational agency homeless liaison, designated pursuant to section 722(g)(1)(J)(ii) of the McKinney-Vento Homeless Assistance Act;

''(ii) the director of a program funded under the Runaway and Homeless Youth Act or a designee of the director; or

''(iii) the director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (relating to emergency shelter grants) or a designee of the director; or''; and

(F) by adding at the end the following:

''(2) SIMPLIFYING THE DEPENDENCY OVERRIDE PROCESS.—A financial aid administrator may make a determination of independence under paragraph (1)(I) based upon a documented determination of independence that was previously made by another financial aid administrator under such paragraph in the same award year.'';

(3) in subsection (e)—

(A) in paragraph (3), by striking ''and'' after the semicolon;

(B) in paragraph (4), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(5) special combat pay.'';

(4) in subsection (f), by striking paragraph (3) and inserting the following:

''(3) A qualified education benefit shall be considered an asset of—

''(A) the student if the student is an independent student; or

''(B) the parent if the student is a dependent student, regardless of whether the owner of the account is the student or the parent.'';

(5) in subsection (j)—

(A) in paragraph (2), by inserting '', or a distribution that is not includable in gross income under section 529 of such Code, under another prepaid tuition plan offered by a State, or under a Coverdell education savings account under section 530 of such Code,'' after ''1986''; and

(B) by adding at the end the following:

''(4) Notwithstanding paragraph (1), special combat pay shall not be treated as estimated financial assistance for purposes of section 471(3).''; and

(6) by adding at the end the following:

''(n) SPECIAL COMBAT PAY.—The term 'special combat pay' means pay received by a member of the Armed Forces because of exposure to a hazardous situation.''.

SEC. 605. AUTHORIZATION AND APPROPRIATIONS.

There are authorized to be appropriated, and there are appropriated, out of any money in the Treasury not otherwise appropriated, $10,000,000 for fiscal year 2008 for the Department of Education to pay the estimated increase in costs in the Federal Pell Grant program under section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) resulting from the amendments made by sections 603 and 604 for award year 2007–2008.

TITLE VII—MISCELLANEOUS

SEC. 701. COMPETITIVE LOAN AUCTION PILOT PROGRAM.

Title IV (20 U.S.C. 1070 et seq.) is further amended by adding at the end the following:

''PART I—COMPETITIVE LOAN AUCTION PILOT PROGRAM; STATE GRANT PROGRAM

''SEC. 499. COMPETITIVE LOAN AUCTION PILOT PROGRAM.

''(a) DEFINITIONS.—In this section:

''(1) ELIGIBLE FEDERAL PLUS LOAN.—The term 'eligible Federal PLUS Loan' means a loan described in section 428B made to a parent of a dependent student.

''(2) ELIGIBLE LENDER.—The term 'eligible lender' has the meaning given the term in section 435.

''(b) PILOT PROGRAM.—The Secretary shall carry out a pilot program under which the Secretary establishes a mechanism for an auction of eligible Federal PLUS Loans in accordance with this subsection. The pilot program shall meet the following requirements:

''(1) PLANNING AND IMPLEMENTATION.—During the period beginning on the date of enactment of this section and ending on June 30, 2009, the Secretary shall plan and implement the pilot program under this subsection.

''(2) ORIGINATION AND DISBURSEMENT; APPLICABILITY OF SECTION 428B.—Beginning on July 1, 2009, the Secretary shall arrange for the origination and disbursement of all eligible Federal PLUS Loans in accordance with the provisions of this subsection and the provisions of section 428B that are not inconsistent with this subsection.

''(3) LOAN ORIGINATION MECHANISM.—The Secretary shall establish a loan origination auction mechanism that meets the following requirements:

''(A) AUCTION.—The Secretary administers an auction under this paragraph for each State under which eligible lenders compete to originate eligible Federal PLUS Loans under this paragraph at all institutions of higher education within the State.

''(B) PREQUALIFICATION PROCESS.—The Secretary establishes a prequalification process for eligible lenders desiring to participate in an auction under this paragraph that contains, at a minimum—

''(i) a set of borrower benefits and servicing requirements each eligible lender shall meet in order to participate in such an auction; and

''(ii) an assessment of each such eligible lender's capacity, including capital capacity, to participate effectively.

''(C) TIMING AND ORIGINATION.—Each State auction takes place every 2 years, and the eligible lenders with the winning bids for the State are the only eligible lenders permitted to originate eligible Federal PLUS Loans made under this paragraph for the cohort of students at the institutions of higher education within the State until the students graduate from or leave the institutions of higher education.

''(D) BIDS.—Each eligible lender's bid consists of the amount of the special allowance payment (including the recapture of excess interest) the eligible lender proposes to accept from the Secretary with respect to the eligible Federal PLUS Loans made under this paragraph in lieu of the amount determined under section 438(b)(2)(I).

''(E) MAXIMUM BID.—The maximum bid allowable under this paragraph shall not exceed the amount of the special allowance payable on eligible Federal PLUS Loans made under this paragraph computed under section 438(b)(2)(I) (other than clauses (ii), (iii), (iv), and (vi) of such section), except that for purposes of the computation under this subparagraph, section 438(b)(2)(I)(i)(III) shall be applied by substituting '1.74 percent' for '2.34 percent'.

''(F) WINNING BIDS.—The winning bids for each State auction shall be the 2 bids containing the lowest and the second lowest proposed special allowance payments, subject to subparagraph (E).

''(G) AGREEMENT WITH SECRETARY.—Each eligible lender having a winning bid under subparagraph (F) enters into an agreement with the Secretary under which the eligible lender—

''(i) agrees to originate eligible Federal PLUS Loans under this paragraph to each borrower who—

''(I) seeks an eligible Federal PLUS Loan under this paragraph to enable a dependent student to attend an institution of higher education within the State;

''(II) is eligible for an eligible Federal PLUS Loan; and

''(III) elects to borrow from the eligible lender; and

''(ii) agrees to accept a special allowance payment (including the recapture of excess interest) from the Secretary with respect to the eligible Federal PLUS Loans originated under clause (i) in the amount proposed in the second lowest winning bid described in subparagraph (F) for the applicable State auction.

''(H) SEALED BIDS; CONFIDENTIALITY.—All bids are sealed and the Secretary keeps the bids confidential, including following the announcement of the winning bids.

''(I) ELIGIBLE LENDER OF LAST RESORT.—

''(i) IN GENERAL.—In the event that there is no winning bid under subparagraph (F), the students at the institutions of higher education within the State that was the subject of the auction shall be served by an eligible lender of last resort, as determined by the Secretary.

''(ii) DETERMINATION OF ELIGIBLE LENDER OF LAST RESORT.—Prior to the start of any auction under this paragraph, eligible lenders that desire to serve as an eligible lender of last resort shall submit an application to the Secretary at such time and in such manner as the Secretary may determine. Such application shall include an assurance that the eligible lender will meet the prequalification requirements described in subparagraph (B).

''(iii) GEOGRAPHIC LOCATION.—The Secretary shall identify an eligible lender of last resort for each State.

''(iv) NOTIFICATION TIMING.—The Secretary shall not identify any eligible lender of last resort until after the announcement of all the winning bids for a State auction for any year.

''(J) GUARANTEE AGAINST LOSSES.—The Secretary guarantees the eligible Federal PLUS Loans made under this paragraph against losses resulting from the default of a parent borrower in an amount equal to 99 percent of the unpaid principal and interest due on the loan.

''(K) LOAN FEES.—The Secretary shall not collect a loan fee under section 438(d) with respect to an eligible Federal Plus Loan originated under this paragraph.

''(L) CONSOLIDATION.—

''(i) IN GENERAL.—An eligible lender who is permitted to originate eligible Federal PLUS Loans for a borrower under this paragraph shall have the option to consolidate such loans into 1 loan.

''(ii) NOTIFICATION.—In the event a borrower with eligible Federal PLUS Loans made under this paragraph wishes to consolidate the loans, the borrower shall notify the eligible lender who originated the loans under this paragraph.

''(iii) LIMITATION ON ELIGIBLE LENDER OPTION TO CONSOLIDATE.—The option described in clause (i) shall not apply if—

''(I) the borrower includes in the notification in clause (ii) verification of consolidation terms and conditions offered by an eligible lender other than the eligible lender described in clause (i); and

''(II) not later than 10 days after receiving such notification from the borrower, the eligible lender described in clause (i) does not agree to match such terms and conditions, or provide more favorable terms and conditions to such borrower than the offered terms and conditions described in subclause (I).

''(iv) CONSOLIDATION OF ADDITIONAL LOANS.—If a borrower has a Federal Direct PLUS Loan or a loan made on behalf of a dependent student under section 428B and seeks to consolidate such loan with an eligible Federal PLUS Loan made under this paragraph, then the eligible lender that originated the borrower's loan under this paragraph may include in the consolidation under this subparagraph a Federal Direct PLUS Loan or a loan made on behalf of a dependent student under section 428B, but only if—

''(I) in the case of a Federal Direct PLUS Loan, the eligible lender agrees, not later than 10 days after the borrower requests such consolidation from the lender, to match the consolidation terms and conditions that would otherwise be available to the borrower if the borrower consolidated such loans in the loan program under part D; or

''(II) in the case of a loan made on behalf of a dependent student under section 428B, the eligible lender agrees, not later than 10 days after the borrower requests such consolidation from the lender, to match the consolidation terms and conditions offered by an eligible lender other than the eligible lender that originated the borrower's loans under this paragraph.

''(v) SPECIAL ALLOWANCE ON CONSOLIDATION LOANS THAT INCLUDE LOANS MADE UNDER THIS PARAGRAPH.—The applicable special allowance payment for loans consolidated under this paragraph shall be equal to the lesser of—

''(I) the weighted average of the special allowance payment on such loans, except that such weighted average shall exclude the special allowance payment for any Federal Direct PLUS Loan included in the consolidation; or

''(II) the result of—

''(aa) the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period; plus

''(bb) 1.59 percent.

''(vi) INTEREST PAYMENT REBATE FEE.—Any loan under section 428C consolidated under this paragraph shall not be subject to the interest payment rebate fee under section 428C(f).

''(c) COLLEGE ACCESS PARTNERSHIP GRANT PROGRAM.—

''(1) PURPOSE.—It is the purpose of this subsection to make payments to States to assist the States in carrying out the activities and services described in paragraph (7) in order to increase access to higher education for students in the State.

''(2) AUTHORIZATION AND APPROPRIATIONS.—There are authorized to be appropriated, and there are appropriated, $113,000,000 for each of the fiscal years 2008 and 2009 to carry out this subsection.

''(3) PROGRAM AUTHORIZED.—

''(A) GRANTS AUTHORIZED.—From amounts appropriated under paragraph (2), the Secretary shall award grants, from allotments under paragraph (4), to States having applications approved under paragraph (5), to enable the State to pay the Federal share of the costs of carrying out the activities and services described in paragraph (7).

''(B) FEDERAL SHARE; NON-FEDERAL SHARE.—

''(i) FEDERAL SHARE.—The amount of the Federal share under this subsection for a fiscal year shall be equal to ⅔ of the costs of the activities and services described in paragraph (7).

''(ii) NON-FEDERAL SHARE.—The amount of the non-Federal share under this subsection shall be equal to ⅓ of the costs of the activities and services described in paragraph (7). The non-Federal share may be in cash or in-kind, and may be provided from a combination of State resources and contributions from private organizations in the State.

''(C) REDUCTION FOR FAILURE TO PAY NON-FEDERAL SHARE.—If a State fails to provide the full non-Federal share required under this paragraph, the Secretary shall reduce the amount of the grant payment under this subsection proportionately.

''(D) TEMPORARY INELIGIBILITY FOR SUBSEQUENT PAYMENTS.—

''(i) IN GENERAL.—The Secretary shall determine a State to be temporarily ineligible to receive a grant payment under this subsection for a fiscal year if—

''(I) the State fails to submit an annual report pursuant to paragraph (9) for the preceding fiscal year; or

''(II) the Secretary determines, based on information in such annual report, that the State is not effectively meeting the conditions described under paragraph (8) and the goals of the application under paragraph (5).

''(ii) REINSTATEMENT.—If the Secretary determines a State is ineligible under clause (i), the Secretary may enter into an agreement with the State setting forth the terms and conditions under which the State may regain eligibility to receive payments under this subsection.

''(4) DETERMINATION OF ALLOTMENT.—

''(A) AMOUNT OF ALLOTMENT.—Subject to subparagraph (B), in making grant payments to States under this subsection, the allotment to each State for a fiscal year shall be equal to the sum of—

''(i) the amount that bears the same relation to 50 percent of the amount appropriated under paragraph (2) for such fiscal year as the number of residents in the State aged 5 through 17 who are living below the poverty line applicable to the resident's family size (as determined under section 673(2) of the Community Service Block Grant Act) bears to the total number of such residents in all States; and

''(ii) the amount that bears the same relation to 50 percent of the amount appropriated under paragraph (2) for such fiscal year as the number of residents in the State aged 15 through 44 who are living below the poverty line applicable to the individual's family size (as determined under section 673(2) of the Community Service Block Grant Act) bears to the total number of such residents in all States.

''(B) MINIMUM AMOUNT.—No State shall receive an allotment under this subsection for a fiscal year in an amount that is less than ½ of 1 percent of the total amount appropriated under paragraph (2) for such fiscal year.

''(5) SUBMISSION AND CONTENTS OF APPLICATION.—

''(A) IN GENERAL.—For each fiscal year for which a State desires a grant payment under paragraph (3), the State agency with jurisdiction over higher education, or another agency designated by the Governor of the State to administer the program under this subsection, shall submit an application to the Secretary at such time, in such manner, and containing the information described in subparagraph (B).

''(B) APPLICATION.—An application submitted under subparagraph (A) shall include the following:

''(i) A description of the State's capacity to administer the grant under this subsection and report annually to the Secretary on the activities and services described in paragraph (7).

''(ii) A description of the State's plan for using the grant funds to meet the requirements of paragraphs (7) and (8), including plans for how the State will make special efforts to provide such benefits to students in the State that are underrepresented in postsecondary education.

''(iii) A description of how the State will provide or coordinate the non-Federal share from State and private funds, if applicable.

''(iv) A description of the existing structure that the State has in place to administer the activities and services under paragraph (7) or the plan to develop such administrative capacity.

''(6) PAYMENT TO ELIGIBLE NONPROFIT ORGANIZATIONS.—A State receiving a payment under this subsection may elect to make a payment to 1 or more eligible nonprofit organizations, including an eligible not-for-profit holder (as defined in section 438(p)), or a partnership of such organizations, in the State in order to carry out

activities or services described in paragraph (7), if the eligible nonprofit organization or partnership—

''(A) was in existence on the day before the date of enactment of the Higher Education Access Act of 2007; and

''(B) as of the day of such payment, is participating in activities and services related to increasing access to higher education, such as those activities and services described in paragraph (7).

''(7) ALLOWABLE USES.—

''(A) IN GENERAL.—Subject to subparagraph (C), a State may use a grant payment under this subsection only for the following activities and services, pursuant to the conditions under paragraph (8):

''(i) Information for students and families regarding—

''(I) the benefits of a postsecondary education;

''(II) postsecondary education opportunities;

''(III) planning for postsecondary education; and

''(IV) career preparation.

''(ii) Information on financing options for postsecondary education and activities that promote financial literacy and debt management among students and families.

''(iii) Outreach activities for students who may be at risk of not enrolling in or completing postsecondary education.

''(iv) Assistance in completion of the Free Application for Federal Student Aid or other common financial reporting form under section 483(a).

''(v) Need-based grant aid for students.

''(vi) Professional development for guidance counselors at middle schools and secondary schools, and financial aid administrators and college admissions counselors at institutions of higher education, to improve such individuals' capacity to assist students and parents with—

''(I) understanding—

''(aa) entrance requirements for admission to institutions of higher education; and

''(bb) State eligibility requirements for Academic Competitiveness Grants or National SMART Grants under section 401A, and other financial assistance that is dependent upon a student's coursework;

''(II) applying to institutions of higher education;

''(III) applying for Federal student financial assistance and other State, local, and private student financial assistance and scholarships;

''(IV) activities that increase students' ability to successfully complete the coursework required for a postsecondary degree, including activities such as tutoring or mentoring; and

''(V) activities to improve secondary school students' preparedness for postsecondary entrance examinations.

''(vii) Student loan cancellation or repayment (as applicable), or interest rate reductions, for borrowers who are employed in a high-need geographical area or a high-need profession in the State, as determined by the State.

''(B) PROHIBITED USES.—Funds made available under this subsection shall not be used to promote any lender's loans.

''(C) USE OF FUNDS FOR ADMINISTRATIVE PURPOSES.—A State may use not more than 2 percent of the total amount of the Federal share and non-Federal share provided under this subsection for administrative purposes relating to the grant under this subsection.

''(8) SPECIAL CONDITIONS.—

''(A) AVAILABILITY TO STUDENTS AND FAMILIES.—A State receiving a grant payment under this subsection shall—

''(i) make the activities and services described in clauses (i) through (vi) of paragraph (7)(A) that are funded under the payment available to all qualifying students and families in the State;

''(ii) allow students and families to participate in the activities and services without regard to—

''(I) the postsecondary institution in which the student enrolls;

''(II) the type of student loan the student receives;

''(III) the servicer of such loan; or

''(IV) the student's academic performance;

''(iii) not charge any student or parent a fee or additional charge to participate in the activities or services; and

''(iv) in the case of an activity providing grant aid, not require a student to meet any condition other than eligibility for Federal financial assistance under this title, except as provided for in the loan cancellation or repayment or interest rate reductions described in paragraph (7)(A)(vii).

''(B) PRIORITY.—A State receiving a grant payment under this subsection shall, in carrying out any activity or service described in paragraph (7)(A) with the grant funds, prioritize students and families who are living below the poverty line applicable to the individual's family size (as determined under section 673(2) of the Community Service Block Grant Act).

''(C) DISCLOSURES.—

''(i) ORGANIZATIONAL DISCLOSURES.—In the case of a State that has chosen to make a payment to an eligible not-for-profit holder in the State in accordance with paragraph (6), the holder shall clearly and prominently indicate the name of the holder and the nature of its work in connection with any of the activities carried out, or any information or services provided, with such funds.

''(ii) INFORMATIONAL DISCLOSURES.—Any information about financing options for higher education provided through an activity or service funded under this subsection shall—

''(I) include information to students and the students' parents of the availability of Federal, State, local, institutional, and other grants and loans for postsecondary education; and

''(II) present information on financial assistance for postsecondary education that is not provided under this title in a manner that is clearly distinct from information on student financial assistance under this title.

''(D) COORDINATION.—A State receiving a grant payment under this subsection shall attempt to coordinate the activities carried out with the payment with any existing activities that are similar to such activities, and with any other entities that support the existing activities in the State.

''(9) REPORT.—A State receiving a payment under this subsection shall prepare and submit an annual report to the Secretary on the program under this subsection and on the implementation of the activities and services described in paragraph (7). The report shall include—

''(A) each activity or service that was provided to students and families over the course of the year;

''(B) the cost of providing each activity or service;

''(C) the number, and percentage, if feasible and applicable, of students who received each activity or service; and

''(D) the total contributions from private organizations included in the State's non-Federal share for the fiscal year.

''(10) SUNSET.—The authority provided to carry out this subsection shall expire on September 30, 2009.

''(d) FINANCIAL LITERACY PROGRAM ESTABLISHED.—

''(1) DEFINITION OF ELIGIBLE ENTITY.—In this subsection, the term 'eligible entity' means a nonprofit or for-profit organization, or a consortium of such organizations, with a demonstrated record of effectiveness in providing financial literacy services to students at the secondary and postsecondary level.

''(2) PROGRAM ESTABLISHED.—From amounts appropriated under paragraph (6), the Secretary shall award grants to eligible entities to enable the eligible entities to increase the financial literacy of students who are enrolled or will enroll in an institution of higher education, including providing instruction to students on topics such as the understanding of loan terms and conditions, the calculation of interest rates, refinancing of debt, debt management, and future savings for education, health care and long-term care, and retirement.

''(3) GRANT PERIOD; RENEWABILITY.—Each grant under this subsection shall be awarded for one 5-year period, and may not be renewed.

''(4) MATCHING REQUIREMENTS.—Each eligible entity that receives a grant under this subsection shall provide, from non-Federal sources, an amount (which may be provided in cash or in kind) to carry out the activities supported by the grant equal to 100 percent of the amount received under the grant.

''(5) APPLICATIONS.—An eligible entity desiring a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require. Such application shall include the following:

''(A) A detailed description of the eligible entity's plans for providing financial literacy activities and the students and schools the grant will target.

''(B) The eligible entity's plan for using the matching grant funds, including how the funds will be used to provide financial literacy programs to students.

''(C) A plan to ensure the viability of the work of the eligible entity beyond the grant period.

''(D) A detailed description of the activities that carry out this subsection and that are conducted by the eligible entity at the time of the application, and how the matching grant funds will assist the eligible entity with expanding and enhancing such activities.

''(E) A description of the strategies that will be used to target activities under the grant to students in secondary school and enrolled in institutions of higher education who are historically underrepresented in institutions of higher education and who may benefit from the activities of the eligible entity.

''(6) AUTHORIZATION AND APPROPRIATIONS.—There are authorized to be appropriated, and there are appropriated, $10,000,000 for each of the fiscal years 2008 and 2009 to carry out this subsection.

''(e) SECONDARY SCHOOL GRADUATION AND COLLEGE ENROLLMENT PROGRAM.—

''(1) DEFINITIONS.—In this subsection:

''(A) ELIGIBLE LOCAL EDUCATIONAL AGENCY.—

''(i) IN GENERAL.—The term 'eligible local educational agency' means a local educational agency with a secondary school graduation rate of 70 percent or less—

''(I) in the aggregate; or

''(II) applicable to 2 or more subgroups of secondary school students served by the local educational agency that are described in clause (ii).

''(ii) SUBGROUPS.—A subgroup referred to in clause (i)(II) is—

''(I) a subgroup of economically disadvantaged students; or

''(II) a subgroup of students from a major racial or ethnic group.

''(B) ELIGIBLE ENTITY.—The term 'eligible entity' means a consortium of a nonprofit organization and an institution of higher education with a demonstrated record of effectiveness in raising secondary school graduation rates and postsecondary enrollment rates.

''(2) PROGRAM ESTABLISHED.—From amounts appropriated under paragraph (7), the Secretary shall award grants to eligible entities to enable the eligible entities to carry out activities that—

''(A) create models of excellence for academically rigorous secondary schools, including early college secondary schools;

''(B) increase secondary school graduation rates;

''(C) raise the rate of students who enroll in an institution of higher education;

''(D) improve instruction and access to supports for struggling secondary school students;

''(E) create, implement, and utilize early warning systems to help identify students at risk of dropping out of secondary school; and

''(F) improve communication between parents, students, and schools concerning requirements for secondary school graduation, postsecondary education enrollment, and financial assistance available for attending postsecondary education.

''(3) USE OF FUNDS.—An eligible entity that receives a grant under this subsection shall use the funds—

''(A) to implement a college-preparatory curriculum for all students in a secondary school served by the eligible local educational agency that is, at a minimum, aligned with a rigorous secondary school program of study;

''(B) to implement accelerated academic catch-up programs, for students who enter secondary school not meeting the proficient levels of student academic achievement on the State academic assessments for mathematics, reading or language arts, or science under section 1111(b)(3) of the Elementary and Secondary Education Act of 1965, that enable such students to meet the proficient levels of achievement and remain on track to graduate from secondary school on time with a regular secondary school diploma;

''(C) to implement an early warning system to quickly identify students at risk of dropping out of secondary school, including systems that track student absenteeism; and

''(D) to implement a comprehensive postsecondary education guidance program that—

''(i) will ensure that all students are regularly notified throughout the students' time in secondary school of secondary school graduation requirements and postsecondary education entrance requirements; and

''(ii) provides guidance and assistance to students in applying to an institution of higher education and in applying for Federal financial assistance and other State, local, and private financial assistance and scholarships.

''(4) GRANT PERIOD; RENEWABILITY.—Each grant under this subsection shall be awarded for one 5-year period, and may not be renewed.

''(5) MATCHING REQUIREMENTS.—Each eligible entity that receives a grant under this subsection shall provide, from non-Federal sources, an amount (which may be provided in cash or in-kind) to carry out the activities supported by the grant equal to 100 percent of the amount received under the grant.

''(6) APPLICATIONS.—An eligible entity desiring a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

''(7) AUTHORIZATION AND APPROPRIATIONS.—There are authorized to be appropriated, and there are appropriated, $25,000,000 for each of the fiscal years 2008 and 2009 to carry out this subsection.''.

SEC. 702. INNOCENT CHILD PROTECTION.

(a) IN GENERAL.—It shall be unlawful for any authority, military or civil, of the United States, a State, or any district, possession, commonwealth or other territory under the authority of the United States, to carry out a sentence of death on a woman while she carries a child in utero.

(b) DEFINITION.—In this section, the term ''child in utero'' means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

TITLE VIII—OTHER MATTERS

SEC. 801. SENSE OF SENATE ON THE DETAINEES AT GUANTANAMO BAY, CUBA.

(a) FINDINGS.—The Senate makes the following findings:

(1) During the War on Terror, senior members of al Qaeda have been captured by the United States military and intelligence personnel and their allies.

(2) Many such senior members of al Qaeda have since been transferred to the detention facility at Guantanamo Bay, Cuba.

(3) These senior al Qaeda members detained at Guantanamo Bay include Khalid Sheikh Mohammed, who was the mastermind behind the terrorist attacks of September 11, 2001, which killed approximately 3,000 innocent people.

(4) These senior al Qaeda members detained at Guantanamo Bay also include Majid Khan, who was tasked to develop plans to poison water reservoirs inside the United States, was responsible for conducting a study on the feasibility of a potential gas station bombing campaign inside the United States, and was integral in recommending Iyman Farris, who plotted to destroy the Brooklyn Bridge, to be an operative for al Qaeda inside the United States.

(5) These senior al Qaeda members detained at Guantanamo Bay also include Abd al-Rahim al-Nashiri, who was an al Qaeda operations chief for the Arabian Peninsula and who, at the request of Osama bin Laden, orchestrated the attack on the U.S.S. Cole, which killed 17 United States sailors.

(6) These senior al Qaeda members detained at Guantanamo Bay also include Ahmed Khalfan Ghailani, who played a major role in the East African Embassy Bombings, which killed more than 250 people.

(7) The Department of Defense has estimated that of the approximately 415 detainees who have been released or transferred from the detention facility at Guantanamo Bay, at least 29 have subsequently taken up arms against the United States and its allies.

(8) Osama bin Laden, the leader of al Qaeda, said in his 1998 fatwa against the United States, that ''[t]he ruling to kill the Americans and their allies—civilians and military—is an individual duty for every Muslim who can do it in any country in which it is possible to do it''.

(9) In the same fatwa, bin Laden said, ''[w]e—with God's help—call on every Muslim who believes in God and wishes to be rewarded to comply with God's order to kill the Americans and plunder their money wherever and whenever they find it''.

(10) It is safer for American citizens if captured members of al Qaeda and other terrorist organizations are not housed on American soil where they could more easily carry out their mission to kill innocent civilians.

(b) SENSE OF SENATE.—It is the sense of the Senate that detainees housed at Guantanamo Bay, Cuba, including senior members of al Qaeda, should not be released into American society, nor should they be transferred stateside into facilities in American communities and neighborhoods.

NOTICE: REGISTRATION OF MASS MAILINGS

The filing date for 2007 second quarter Mass Mailings is Wednesday, July 25, 2007. If your office did no mass mailings during this period, please submit a form that states ''none.''

Mass mailing registrations, or negative reports, should be submitted to the Senate Office of Public Records, 232 Hart Building, Washington, DC 20510–7116.

The Public Records office will be open from 9 a.m. to 5:30 p.m. on the filing date to accept these filings. For further information, please contact the Public Records office on (202) 224–0322.

ORDERS FOR MONDAY, JULY 23, 2007

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 10 a.m., Monday, July 23; that on Monday, following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, and the time for the two leaders reserved for their use later in the day; that the Senate then proceed to the consideration of S. 1642, with the other provisions of the previous order remaining in effect.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ADJOURNMENT UNTIL MONDAY, JULY 23, 2007, AT 10 A.M.

Mr. REID. Mr. President, I believe there is no business now to come before the Senate. That being the case, I ask unanimous consent that the Senate stand adjourned under the previous order.

There being no objection, the Senate, at 12:03 p.m., adjourned until Monday, July 23, 2007, at 10 a.m.